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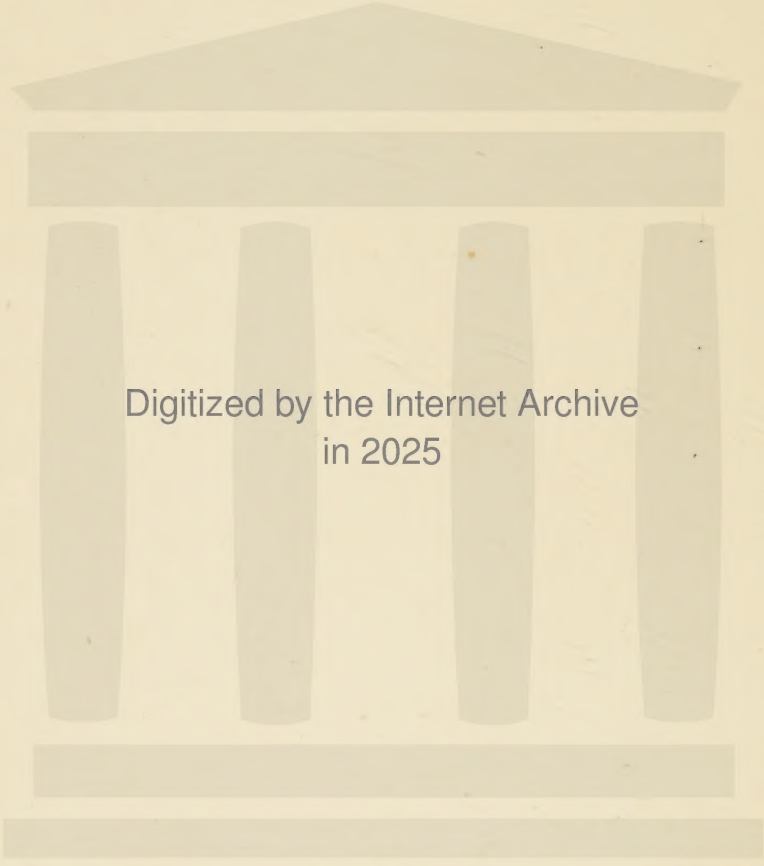
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BY

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ASSISTED BY

DONALD C. L. CREE,

BOTH OF LINCOLN'S INN, BARRISTERS-AT-LAW,

OF THE

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BY THE LATE

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IN TWO VOLUMES.

VOL. II.

LONDON:

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ADDENDUM.

Page 634. To note (c) add the following:—

Nuncupative Wills.—As to wills of soldiers and seamen on service, see Statute of Frauds (29 Car. II. c. 3), s. 23, the Wills Act, 1837, s. 11, and The Navy and Mariners (Wills) Act, 1865, amended by the Navy and Mariners (Wills) Act, 1897. And as to the wills of British subjects made out of the United Kingdom, see the Wills Act, 1861 (commonly known as Lord Kingsdown's Act), as to the effect of which see Jarm. on Wills, 6th ed. vol. 1, chap. I., and K. & E., 10th ed. vol. 2, p. 1000.

MORTGAGES.

PRELIMINARY NOTE.

Stamp Duties.

The payment of stamp duties on "mortgages" is regulated by sects. 86 to 89 of the Stamp Act, 1891, and a scale of duties is fixed by the schedule to that Act under the head of "Mortgage," &c., as follows:—

	Duty. £	s.	d.
Mortgage, Bond, Debenture, Covenant (except a marketable security otherwise specially charged with duty), and Warrant of Attorney to confess and enter up judgment.			
(1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—			
Not exceeding 10*l.*	0	0	3
Exceeding 10*l.* and not exceeding 25*l.* .	0	0	8
,, 25*l.* ,, 50*l.* .	0	1	3
,, 50*l.* ,, 100*l.* .	0	2	6
,, 100*l.* ,, 150*l.* .	0	3	9
,, 150*l.* ,, 200*l.* .	0	5	0
,, 200*l.* ,, 250*l.* .	0	6	3
,, 250*l.* ,, 300*l.* .	0	7	6
,, 300*l.*			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured	0	2	6

Duty.

(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped:

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured . . . . . £ 0 0 6

(3) Being an equitable mortgage:

For every 100*l.*, and any fractional part of 100*l.*, of the amount secured . . £ 0 1 0

(4) Transfer, Assignment, Disposition, or Assignation of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear . . . . . £ 0 0 6

And also where any further money is added to the money already secured . . . . . The same duty as a principal security for such further money.

(5) Reconveyance, Release, Discharge, Surrender, Resurrender, Warrant to Vacate, or Renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:

For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount or value of the money at any time secured . . . £ 0 0 6

And see sects. 86, 87, 88, and 89.

Mortgage of Stock or Marketable Security—

Under hand only. See "*Agreement*," and sect. 23.

By deed. See "*Mortgage*," and sect. 86.

For the purpose of the Act, "equitable mortgage" means an agreement or memorandum under hand only relating to the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security) or creating a charge on such property. See sect. 86 (2).

Sect. 7 of the Revenue Act, 1903, enacts that the whole amount of duty payable under paragraph (2) of the above schedule shall not exceed 10*s*. This section is not retrospective: *Suffield* v. *I. R. Commrs.*, [1908] 1 K. B. 865.

As to the stamp duty on debentures, see *Knight's Deep, Limited* v. *I. R. Commrs.*, [1900] 1 Q. B. 217; *Mount Lyell Rail. Co.* v. *I. R. Commrs.*, [1905] 1 K. B. 161. As to stamp on trust deed to secure debentures, see *City of London Brewery Co., Limited* v. *I. R. Commrs.*, [1899] 1 Q. B. 121. As to agreement to execute mortgage: *The Limited Realization Co.* v. *I. R. Commrs.*, *ibid.* 361. As to debenture stock, see sect. 8 of Finance Act, 1899, and sect. 10 of Finance Act, 1907, and *London and India Docks Co.* v. *Att.-Gen.*, [1909] A. C. 7. As to building societies' mortgages, see Stamp Act, 1891, s. 89; and as to marketable securities, see Stamp Act, 1891, ss. 82 to 85, and Sched. 1, *sub tit.* "Marketable Securities;" sect. 76 of Finance (1909-10) Act, 1910, and sect. 4 of Finance Act, 1899.

As to bills of sale, see sect. 41 of the Stamp Act, 1891; and as to mortgages of life policies, see sect. 118 of the same Act.

Conveyancing Acts.

Upon mortgagors and mortgagees respectively the following powers are conferred by the Conveyancing Acts:—

On mortgagors—

(1) To require the mortgagee (not in possession) to transfer instead of reconveying: Conveyancing Act, 1881, s. 15, which is retrospective, and applies notwithstanding stipulation to the contrary; and see Conveyancing Act, 1882, s. 12.

(2) To inspect, &c. deeds: Conveyancing Act, 1881, s. 16 (not retrospective, but applies notwithstanding stipulation to the contrary).

(3) To redeem one mortgage without any other (restricting mortgagee's right of consolidation): Conveyancing Act, 1881, s. 17 (applies where mortgages, or one of them, made after 1881).

(4) When in possession, and no receiver appointed, to grant certain leases: Conveyancing Act, 1881, s. 18 (1) (17), and Conveyancing Act, 1911, s. 3 (not retrospective except by agreement).

(5) To obtain order for sale in foreclosure or redemption action: Conveyancing Act, 1881, s. 25 (retrospective).

On mortgagees (under deeds made after 1881)—

(6) When in possession to grant certain leases, &c.: Conveyancing Act, 1881, s. 18 (2) (17), and Conveyancing Act, 1911, s. 3 (2) to (11).

(7) To sell when mortgage money due: Conveyancing Act, 1881, ss. 19 (i), 20, 21; with extended powers under Conveyancing Act, 1911, ss. 4, 5.

(8) To insure: Conveyancing Act, 1881, ss. 19 (ii), 23.

(9) To appoint receiver: sects. 19 (iii), 24.

(10) When in possession, to sell and cut timber: sect. 19 (iv).

(11) To recover title deeds: sect. 21 (7).

(12) To give receipts: sect. 22.

(13) To obtain order for sale in foreclosure or redemption action: Conveyancing Act, 1881, s. 25 (2).

Powers (1) to (4) may be exercised by second or subsequent incumbrancers. On the death of a sole mortgagee dying after 1881, the estate (other than copyholds to which he has been admitted, as to which, see Copyhold Act, 1894, s. 88) devolves on his personal representatives, notwithstanding any testamentary disposition: Conveyancing Act, 1881, s. 30.

The Conveyancing Act, 1881, s. 21 (3), directs how the sale moneys are to be applied after discharge of prior incumbrances, viz.: (1) in payment of costs and expenses (extended to increment value duty and reversion duty by Finance (1909-10) Act, 1910, s. 39 (4)); (2) in discharge of mortgage money; and (3) the residue to go to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of sale.

See generally, as to the provisions of the Conveyancing Acts relating to mortgages, K. & E., 10th ed., vol. 2, pp. 48 *et seq.*, and (as to powers of leasing) pp. 62, 63; and see also the notes to the several sections above referred to in Wolstenholme, 10th ed.

As to the mortgage of registered land, see Land Transfer Act, 1875, ss. 22—28, and see *post*, p. 169.

PRECEDENTS.

I. STATUTORY MORTGAGE.

I. STATUTORY MORTGAGE *of* FREEHOLDS *in* FEE (*a*) *to* ONE MORTGAGEE.

THIS INDENTURE (*b*), made by way of statutory mortgage the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (*c*), of the one part, and [*mortgagee*], of, &c., of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to [*mortgagor*] by [*mortgagee*], of which sum [*mortgagor*] hereby acknowledges the receipt (*d*), the said [*mortgagor*], as

Parties.

Testatum.

(*a*) The above form is that given in Part I. of the third schedule to the Conveyancing Act, 1881: see sect. 26 of the Act.

Variations in the above form may be made, if required, for leasehold land or other matter; forms of statutory mortgages in which such variations occur will be found in some of the following precedents.

The principal advantage of the use of the statutory form of mortgage seems to be, that it enables the mortgage to be reconveyed or transferred by means of the short forms of reconveyance and transfer provided by the Act: see *post*, pp. 131, 140, 141. But the form of statutory mortgage, which applies only to freeholds and leaseholds (see Wolstenholme, 10th ed. p. 205), although it may be used with additions or variations, if required, does not seem well adapted for the insertion of special covenants and provisions.

(*b*) Stamp, *ad valorem* on amount secured. Throughout these mortgage precedents, where the stamp is stated to be "*ad valorem*," the higher rate of 2*s.* 6*d.* for every 100*l.* and also for every fractional part of 100*l.* is intended, unless any other rate is expressly mentioned: see Stamp Act, 1891, sched.: *tit.* "Mortgage," &c., *ante*, pp. 1—3.

Stamp.

(*c*) If the mortgage is of property belonging to a woman married on or since the 1st of January, 1883, so as to be within the Married Women's Property Act, 1882, the mortgage will be expressed to be made as follows:—

Mortgage of property of a married woman.

"BETWEEN [*mortgagor*], the wife of [*husband*], of, &c., to whom she was married on the —— day of ——, 1885, of the one part, and [*mortgagee*], of, &c., of the other part."

If, however, the marriage took place before the 1st of January, 1883, but the property was acquired by her after that date, so as to be within the Act, the date of the marriage will not be stated, but recitals must be introduced showing at what date the property was acquired.

These remarks, of course, apply to mortgages in the ordinary form as well as to statutory mortgages. For a mortgage of property of a married woman where the Act does not apply, see *post*, Precedent XXIV.

(*d*) As to the receipt for the consideration being mentioned in the body of the deed, see C. A. 1881, ss. 54, 55 and 56; *Lloyds Bank* v. *Bullock*, [1896] 2 Ch. 192; *Bateman* v. *Hunt*, [1904] 2 K. B. 530. A solicitor

I. STATUTORY MORTGAGE IN FEE.

mortgagor and as beneficial owner, hereby conveys to the said [*mortgagee*] ALL THAT, &c. [*parcels*], TO HOLD to and to the use of [*mortgagee*] in fee simple for securing payment on the — — day of ——, 19— (*e*), of the principal sum of £——, as the mortgage money, with interest thereon at the rate of —— per centum per annum.

IN WITNESS, &c.

II. MORTGAGE *in* FEE *of* FREEHOLDS *to* ONE MORTGAGEE. COVENANT *by* MORTGAGOR *to* INSURE. PROVISO *restricting* MORTGAGOR'S STATUTORY POWERS *of* LEASING.

THIS INDENTURE (*f*), made the —— day of ——, 19—,

Parties. BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter

Testatum. called "the lender") (*g*), of the other part (*h*), WITNESSETH as follows:—

Covenant for payment of principal and interest.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns, on the —— day of — — next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND ALSO (*i*), so long after

---

lending money to a client cannot rely on such a receipt as evidence of the amount advanced by him: see *Lewes* v. *Morgan*, 5 Price, 42. As to transferees or sub-mortgagees, see *Bickerton* v. *Walker*, L. R. 31 Ch. D. 151; *Bateman* v. *Hunt*, [1904] 2 K. B. 530. As to receipts by trustees, see Trustee Act, 1893, s. 17 (1).

(*e*) Generally six months after the date of the mortgage.

Stamp. (*f*) Stamp, *ad valorem* on amount secured.

(*g*) To save the repetition of the names of the mortgagor and mortgagee, the mortgagor is referred to in this and many of the subsequent mortgage precedents as the "borrower," and the mortgagee as the "lender." These terms are less likely to lead to mistakes in copying than the words "mortgagor" and "mortgagee."

Recitals. (*h*) If desired, recitals of the mortgagor's title and of the agreement for the loan may be here inserted as in Precedent XIII., *post*, p. 33.

Covenant for payment of interest. (*i*) A separate covenant for payment of interest enables the mortgagee to recover the interest without calling in the principal. Where a mortgage deed contained no covenant for payment of interest after the day fixed for payment if the principal should be then unpaid, it was held that interest after that day was recoverable only as damages at the rate of 5 per cent.: *Re Roberts*, 14 Ch. D. 49; *Mellersh* v. *Brown*, 45 Ch. D. 225.

II. MORTGAGE IN FEE TO ONE MORTGAGEE.

that day as any principal money shall remain due under this mortgage, to pay to the lender, his executors, administrators, or assigns, interest thereon at the same rate by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year (*k*).

Conveyance of freehold messuage and lands to mortgagee. *Habendum.*

2. For the consideration aforesaid, the borrower hereby, as beneficial owner, grants unto the lender ALL THAT [*describe parcels*], TO HOLD all the premises unto and to the use of the lender, his heirs and assigns (*l*), subject to the proviso for redemption following.

Proviso for redemption.

3. PROVIDED that if the borrower, his heirs, executors, administrators, or assigns, shall on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £—— and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns (*m*) will, at the request and cost of the lender, his heirs, executors, administrators, or assigns, reconvey the premises to the use of the borrower, his heirs and assigns, or as he or they shall direct.

Covenant by mortgagors to insure (*n*).

4. The borrower hereby covenants with the lender to keep the said messuage or dwelling-house and all the buildings upon the premises insured against loss or damage by fire in the sum of £—— at the least [*or*, to the full value thereof], in the —— Insurance Office, or some other fire insurance office to be approved by

(*k*) A mortgagor is entitled to deduct income tax from the interest: *Moss* v. *Galte*, 23 Beav. 269.

(*l*) The expressions "heirs and assigns" and "executors, administrators or assigns" are generally retained in these precedents, as there seems no sufficient reason for substituting for them the equally long and less familiar expressions "in fee simple," or "persons claiming under" or "deriving title under" the grantor or grantee, as the case may be. The use of the statutory forms is not obligatory.

(*m*) The proviso should be as in the text by the mortgagee, "his executors, administrators or assigns," and not, as formerly, by his "heirs or assigns": see sect. 30 of the Conveyancing Act, 1881. This section, however, does not apply to copyholds to which the mortgagee has been admitted: see Copyhold Act, 1894, s. 88.

(*n*) All premiums paid by the mortgagee in effecting an insurance under the statutory power given by the Conveyancing Act, 1881, s. 19 (1) (ii), are a charge on the mortgaged property, with interest. If the statutory power is relied on, the mortgagee may have a difficulty, in the absence of a covenant by the mortgagor to produce the receipt for premiums, in ascertaining whether default in insuring has been made by the mortgagor, that being the event upon which the statutory power arises.

II. MORTGAGE IN FEE TO ONE MORTGAGEE.

the lender, his executors, administrators, or assigns, and to pay all premiums or sums from time to time payable for keeping up such insurance on [*or*, within —— days after] the first day on which every such premium or sum shall become payable, and on demand to produce to him or them the policy or policies of such insurance, and the receipt for every premium or sum payable in respect thereof, and that on the refusal or failure of the borrower, his heirs, executors, or administrators, to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender, his executors, administrators, or assigns, at any time thereafter to effect under the statutory powers in that behalf an insurance of the said messuage or dwelling-house and buildings to an amount not exceeding the sum of £—— [*or*, to the full value thereof].

Covenant against registration (*o*).

5. The borrower for himself and his assigns hereby covenants with the lender that during the continuance of this security no person or persons or corporation shall be registered under the Land Transfer Acts, 1875 and 1897, as proprietor or proprietors of the hereditaments hereby mortgaged, or any part thereof, without the consent in writing of the lender, or his executors, administrators or assigns, and that the costs incurred by the lender or his assigns in lodging from time to time a caution against such registration, and of registering the lender, or his assigns, as proprietor or proprietors as aforesaid, after the power of sale shall have become exerciseable, shall be deemed to be costs properly incurred by him or them hereunder.

Provision as to increment value and reversion duties on sale (*p*).

6. If on a sale of the mortgaged premises, or any part thereof, under the power of sale applicable to this security, the lender, or his assigns, shall be liable to pay increment value or reversion

(*o*) If the land is registered this clause should not be used; but when the land is not registered it is expedient to insert it in order to protect the mortgagee against the inconvenience and delay which may arise on a sale in case the owner of the equity of redemption becomes registered as proprietor: as to which see K. & E. 10th ed. vol. 2, p. 42, note (*a*).

(*p*) See Finance (1909-10) Act, 1910, ss. 1 to 15. It is conceived that the mortgagee might deduct these duties and costs without an express provision to that effect, but until this question has been judicially decided it will be safer to insert this provision. Where the loan is by several, say, "the lenders or their assigns"; and for several mortgagors, say, "the borrowers or their assigns."

duty in respect of the property sold, but the amount of such duties shall not have been determined, the lender, or his assigns, may pay the balance of the sale moneys, after deducting all principal moneys and interest and costs, except the said duties and such costs as hereinafter mentioned, into a bank in his or their name or names to a separate account, and shall, when such amount has been determined, pay the said duties and the costs incurred, but not already deducted by him or them (including the cost of valuations), out of the moneys standing to such separate account, and shall pay the surplus (if any) to the borrower or his assigns.

Proviso restricting mortgagor's powers of leasing.

7. It is hereby agreed, that none of the powers of leasing or of agreeing to lease conferred by the Conveyancing Act, 1881, on a mortgagor in possession, shall be exerciseable during the continuance of this security, by the borrower, his heirs or assigns, in respect of the premises, or any part thereof, without the written consent of the lender, his executors, administrators, or assigns, previously obtained.

Clause preserving mortgagee's right of consolidation (*q*).

8. It is hereby agreed, that the restriction contained in sect. 17 of the Conveyancing Act, 1881, on the right of consolidating mortgage securities shall not apply to this security.

In witness, &c.

III. MORTGAGE *in* Fee *of* Freeholds *to* Several Mortgagees *advancing money on a* Joint Account (*r*). Provisoes *for* Reduction *of* Interest *on* Punctual Payment, *and that* Principal *shall not be* Called *in for a* Certain Time. Covenant *by* Mortgagor *to* Insure. [Proviso *as to* Costs *of* Mortgagee Solicitor *in Note*.]

Parties.

THIS INDENTURE (*s*), made the —— day of ——, 19—, Between [*mortgagor*], of, &c. (hereinafter called "the bor-

(*q*) The clause is only required where there is a probability of there being several mortgage transactions between the parties. As to the effect of sect. 17 of the C. A. 1881, and the equitable rules as to consolidation, see Wolstenholme, 10th ed. pp. 70—73.

(*r*) This form of mortgage should be used by trustees in ordinary mortgages of moneys belonging to the trust estate where (as is usually the case) it is desired that the trust should not be disclosed. For recitals of mortgagor's seisin and agreement for loan, see next precedent.

Stamp.

(*s*) Stamp, *ad valorem* on amount secured. But see note (*b*), *post*, p. 13, as to costs of solicitor mortgagee.

III. MORTGAGE IN FEE TO SEVERAL MORTGAGEES.

rower"), of the one part, [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part, WITNESSETH as follows:—

Testatum.

1. In consideration of the sum of £—— now paid to the borrower by the lenders out of money belonging to them on a joint account (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders to pay to the lenders, on the —— day of ——, 19—, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND ALSO as long after that day as any principal money shall remain due under this mortgage, to pay to the lenders interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Covenant for payment of principal and interest.

Second *testatum.*

Conveyance to mortgagees of freehold farm by reference to schedule and map.

2. For the consideration aforesaid the borrower hereby, as beneficial owner, conveys unto the lenders, ALL THAT messuage and farm-house, and farm, with the several cottages, buildings, closes, or pieces of land, and hereditaments thereto belonging, and held therewith, known as the —— Farm, situate in the parish of ——, in the county of ——, and containing by admeasurement —— acres, —— roods, —— perches, or thereabouts, particularly described in the schedule hereto, and delineated on the plan drawn hereon, and therein coloured —— [such schedule and plan being respectively taken from the apportionment of tithe commutation rent-charge for the parish of —— aforesaid, and from the plan therein referred to]: TO HOLD all the premises unto and to the use of the lenders, their heirs and assigns, subject to the proviso for redemption following, namely,

Proviso for redemption.

3. If the borrower or his assigns shall on the —— day of ——, 19—, pay to the lenders the sum of £—— and interest thereon at the rate aforesaid, then the lenders will, at the request and cost of the borrower, re-convey the premises to the use of the borrower, his heirs and assigns, or as he shall direct.

Proviso for reduction of interest.

4. PROVIDED ALWAYS, that if the borrower shall on every —— day of —— and —— day of —— (*t*) so long as the said principal sum of £——, or any part thereof, shall remain unpaid, or within —— days after each of the said days respectively, pay to the lenders interest on the said principal sum or on such part thereof as shall for the time being remain unpaid, at the rate of ——

(*t*) The half-yearly days on which interest is made payable.

[*the reduced rate*] per cent. per annum, then and in such case (*u*) the lenders shall accept interest for the said principal sum, or for such part thereof as shall for the time being remain unpaid, at the rate of —— [*the reduced rate*] per cent. per annum for every half-year for which such interest shall be paid to them within such days as aforesaid.

III. MORTGAGE IN FEE TO SEVERAL MORTGAGEES.

5. PROVIDED ALSO that if the borrower shall on every —— day of —— and —— day of —— (*x*), or within —— days next after each of such days respectively, pay to the lenders interest on the said principal sum, or for such part thereof as shall for the time being remain unpaid, at the rate hereby provided, then and in such case the lenders shall not before the —— day of ——, 19—, call in the said principal sum, or any part thereof.

Proviso that principal shall not be called in before specified date.

6. PROVIDED ALSO that the borrower shall not be entitled to require or compel the lenders to receive the said principal sum of £——, or any part thereof, before the said —— day of ——, 19—.

Proviso that mortgagor shall not compel receipt of principal before that date.

7. PROVIDED NEVERTHELESS that, notwithstanding anything herein contained, in case of the default or failure of the borrower to observe or perform any of the covenants herein contained, or implied, or any obligation imposed by statute or otherwise, and on his part to be observed or performed, other than the covenant for payment on the —— day of ——, 19—, of the said sum of £——, and interest thereon, or in case the lenders shall enter into possession or receipt of the rents and profits of the premises, or any part thereof, then and in any such case the provisions herein contained for reduction of interest (*z*), and for the not calling in of the said principal sum, or any part thereof, before the said —— day of ——, 19—, shall cease and be of no effect.

Proviso for cesser of foregoing provisoes on breach of mortgagor's covenants, &c. (*y*).

8. The borrower hereby covenants with the lenders that he the borrower will, at his own cost, from time to time, so long as any

Covenant by mortgagor to

(*u*) In order to entitle a mortgagor to the benefit of a proviso for reduction of interest on punctual payment, he must strictly observe the conditions: *Davis* v. *Thomas*, 1 Russell & Mylne, 506.

(*x*) The half-yearly days on which interest is made payable.

(*y*) This proviso will be omitted altogether if there are no covenants, *and* if the statutory power of leasing is excluded; and will require obvious modification if there are no covenants, *or* if the power is excluded.

(*z*) A mortgagee in possession is entitled to charge the higher rate of interest, notwithstanding a proviso for reduction on punctual payment: *Union Bank of London* v. *Ingram*, 16 Ch. D. 53; *Cockburn* v. *Edwards*, 18 Ch. D. 449; *Bright* v. *Campbell*, 41 Ch. D. 388.

III. MORTGAGE IN FEE TO SEVERAL MORTGAGEES.

repair and insure (*a*).

money shall remain due under this mortgage, keep all buildings comprised therein [in good and substantial repair and also] insured (*aa*) against loss or damage by fire, in the —— Fire Office, or in some other insurance office to be approved in writing by the lenders in the aggregate sum of £—— at the least; and will, from time to time, duly and punctually pay the premiums and moneys necessary for effecting and keeping up such insurance; and will, on demand, deliver to the lenders the policy or policies of such insurance, and the receipts for all such payments; AND THAT, in case default shall at any time be made in keeping [in repair as aforesaid or] insured the said buildings, or any of them, or in delivering the said policy or policies or the receipt for any such payment as aforesaid, then and in every such case it shall be lawful for the lenders [to enter upon the premises and effect any repair which they may think necessary or proper, or] to insure and keep insured all or any of the said messuage, cottage, and buildings, in any sum not exceeding £—— [as the case may require]; and that the borrower will, on demand, pay unto the lenders all such sums of money as they or any of them shall expend in or about such [repair or] insurance [as the case may be], with interest for the same at the rate aforesaid, as from the time of the same having been expended respectively; and that, until repayment, the same shall be a charge upon the premises: PROVIDED ALWAYS that, in case any loss or damage by fire shall happen to the said messuage or dwelling-house, buildings, and premises, all moneys which shall be received by virtue of any such policy of insurance as aforesaid, shall forthwith be applied in making good the damage or injury which shall have been sustained, or, in the discretion of the lenders, and if they shall so require, by notice in writing given to the borrower, or left on the premises hereby conveyed, within ——

Application of insurance moneys.

(*a*) For a more concise form of covenant to insure, relying on the statutory provisions as to insurance, see *ante*, p. 7; and see *ibid.* note (*n*), as to the statutory provisions. As to the application of the policy moneys in rebuilding at the request of any person interested in the property, see the Fire Prevention (Metropolis) Act, 1774, s. 83; and see as to this Act, *Westminster Fire Office* v. *Glasgow, &c. Society*, 13 App. Cas. 699, at p. 713; *Re Quicke's Trusts*, [1908] 1 Ch. 887; *Sinnott* v. *Bowden*, [1912] 2 Ch. 414.

(*aa*) Add, if desired—

"in the joint names of the lenders and the borrower."

days after such loss or damage by fire shall have happened, shall be applied in or towards the discharge of the moneys for the time being due under this mortgage (*b*).

Covenant against registration

9. The borrower for himself and his assigns hereby covenants with the lenders that during the continuance of this security no person or persons or corporation shall be registered under the Land Transfer Acts, 1875 and 1897, as proprietor or proprietors of the hereditaments hereby mortgaged without the consent in writing of the lenders, and that the costs incurred by the lenders in lodging, from time to time, a caution against such registration, and in registering themselves as proprietors of the said hereditaments after the power of sale shall have become exerciseable, shall be deemed to be costs properly incurred hereunder (*c*).

10. [*Provision as to increment value and reversion duties on sale,* mutatis mutandis, *p.* 8.]

Interpretation clause.

11. PROVIDED ALWAYS that, in the construction of these

(*b*) Where one of the mortgagees is a solicitor, as is often the case where trust money is lent on mortgage, the following clause may be added here or at the end of the deed:—

Proviso that costs of mortgagee solicitor shall be included in the security.

"AND it is hereby agreed that the said [*solicitor mortgagee*] shall be entitled to make and receive for all business (whether of an ordinary or strictly professional nature or not) done by him or his firm in relation hereto, or to the premises hereby mortgaged, all such charges and emoluments as he would have been entitled to make and receive had he not been a mortgagee hereunder, and that until payment all moneys which shall become due in respect of such services as aforesaid, with interest thereon as from the time when the same shall respectively have become due shall be a charge upon the premises in like manner as the said principal sum of £—— and interest hereby secured."

Extra stamp.

Where this clause is inserted an additional stamp should be impressed for an amount estimated to cover the probable amount of costs.

Before the Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25), a solicitor mortgagee could not, in the absence of express contract, charge profit costs (*Re Roberts,* 43 Ch. D. 52; *Re Wallis,* 25 Q. B. D. 176; *Eyre* v. *Wynn-Mackenzie,* [1894] 1 Ch. 218; *Cheese* v. *Keen,* [1908] 1 Ch. 245); but the Act of 1895, by sects. 2, 3 and 4, enables solicitor mortgagees to make profit charges for business done in relation to the mortgage. As to the construction of the Act, see *Eyre* v. *Wynn-Mackenzie,* [1896] 1 Ch. 135, and *Day* v. *Kelland,* [1900] 2 Ch. 745.

(*c*) See *ante,* p. 8, note (*o*).

III. MORTGAGE IN FEE TO SEVERAL MORTGAGEES.

presents, unless the contrary appears, the expression "the borrower" shall include the said [*mortgagor*], his heirs, executors, administrators, and assigns; and the expression "the lenders" shall include the said [*mortgagees*], and the [survivors or] survivor of them, and the executors or administrators of such survivor and their or his assigns.

Attornment clause (*d*).

12. And for the consideration aforesaid the borrower hereby

(*d*) This clause is sometimes inserted where the mortgagor is in occupation.

Several mortgagors.

Joint tenants should attorn jointly; tenants in common should attorn jointly and separately.

Attornment to receivers.

If a receiver is appointed at the time of the mortgage, the more convenient course is for the mortgagor to attorn to the receiver and not to the mortgagee, and that the attornment clause should be contained in the deed appointing the receiver. The rent should be a fair rent: *Ex parte Williams*, 7 Ch. D. 138; *Re Stockton Iron Furnace Co.*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725; *Ex parte Punnett*, 16 Ch. D. 226. Provided the rent be not in excess of the fair value of the premises, it may be in excess of the amount of the interest payable under the mortgage, and there is no objection to the rent being made to fluctuate according to the happening of certain events: *Ex parte Voisey*, 21 Ch. D. 442.

Neither an attornment clause (*Re Willis*, 21 Q. B. D. 384) nor a power of distress (*Re Roundwood Colliery Co.*, [1897] 1 Ch. 373, approving *Pulbrook* v. *Ashby*, 56 L. J. (Q. B.) 376) will enable a mortgagee to recover rent by distress; but an attornment clause will enable him to recover possession of the land by summary process under Order III. r. 6, and Order XIV. r. 1 of the R. S. C. (see *Kemp* v. *Lester*, [1896] 2 Q. B. 162), since the Acts do not make void the attornment clause except as a bill of sale: see *Mumford* v. *Collier*, 25 Q. B. D. 279. A form of a power of distress is given below, but having regard to the questions and difficulties arising under the Bills of Sale Acts, its use is not recommended.

Power of distress.

"PROVIDED ALWAYS, and it is hereby agreed that in case any interest payable under this security shall fall into arrear by the space of —— days after the days hereinbefore appointed for payment thereof, then and so often as the same shall happen, it shall be lawful for the lenders to enter and distrain upon the premises hereby granted, or such part or parts thereof, as shall for the time being be in the occupation of the borrower, and the distress or distresses then and there made to take, and dispose of according to law, to the intent that thereby all interest so in arrear, and all costs and expenses of and incident to such distress may be fully paid and satisfied."

attorns and becomes tenant from year to year to the lenders of the premises hereby conveyed, or of so much and such part or parts thereof as are in the occupation of the borrower, at the yearly rent of £——, clear of all deductions, to be paid by equal half-yearly payments on the —— day of —— and —— day of —— in every year (i.e., *the days appointed for payment of interest*) during the continuance of this security, but not to be recoverable by distress: PROVIDED ALWAYS, that it shall be lawful for the lenders at any time, without any previous notice, to enter into and upon and take possession of the premises whereof the borrower has hereby attorned tenant, and to determine the tenancy created by the attornment aforesaid: [PROVIDED ALWAYS, that the rents received under or by virtue of such tenancy shall be applied in keeping down the interest which shall from time to time become due under this security, and the surplus thereof shall from time to time be applied, if the lenders shall so think fit, in or towards satisfaction of the principal moneys for the time being due under this security:] PROVIDED ALSO, that neither the receipt of such rents nor the creation of such tenancy, as aforesaid, shall render the lenders liable to account as mortgagees in possession.

III. MORTGAGE IN FEE TO SEVERAL MORTGAGEES.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

IV. EXPRESS POWER *of* SALE *in* MORTGAGE *of* FREEHOLDS *in* FEE *to several* MORTGAGEES, *advancing* MONEY *on a* JOINT ACCOUNT.

IT IS HEREBY AGREED that if default shall be made in payment of the said principal sum of £—— and interest thereon,

Power of sale (*e*).

(*e*) The statutory power of sale given to mortgagees by sect. 19 of the Conveyancing Act, 1881, seems to be fully sufficient in ordinary cases, and is very generally relied on in practice. A form of an express power of sale of freeholds, such as was formerly in common use, is here given, in case a mortgagee should prefer to have an express power, and also as it may be of assistance in framing special powers of sale under particular circumstances, and also in framing mortgages of lands in British colonies or dependencies, where powers of sale are not imported into mortgages by statute, or otherwise. The power in the text is also applicable in the case of copyholds. It should be inserted immediately after the proviso for redemption.

IV. EXPRESS POWER OF SALE IN MORTGAGE OF FREEHOLDS.

as aforesaid, on the said —— day of ——, 19—, then it shall be lawful for the lenders, without any further consent of the borrower, to sell the premises, or any part or parts thereof (*f*), either together or separately, and either by public auction or private contract, and subject to any stipulations as to title or evidence or commencement of title or otherwise, which the lenders shall deem proper, with full power to buy in or rescind or vary any contract for sale, and to resell without being responsible for any loss occasioned thereby; AND to execute and do all such assurances and things for effectuating any such sale, as they shall deem proper; AND that upon any such sale, as aforesaid, by any person or persons who may not be seised of the legal estate in the premises sold, the person or persons in whom the legal estate in the same premises shall be vested shall execute and do all such assurances and things for carrying the sale into effect, as the person or persons by whom the sale shall be made shall direct (*g*); PROVIDED ALWAYS, that the lenders shall not execute the power of sale hereinbefore contained, unless and until default shall have been made in payment, at the time hereinbefore appointed for payment thereof, of some principal money or interest, the payment whereof is intended to be hereby secured, and they shall have given a notice in writing to the borrower to pay off the moneys for the time being owing on the security of these presents, or shall have left a notice in writing to that effect, at or upon some part of the premises hereby conveyed, and default shall have been made in payment of the whole or part of such moneys for *six* calendar months from the time of giving or leaving such notice, or unless and until the whole or part of some

Proviso that the power shall be exercised only in certain events.

(*f*) This power is applicable also in the case of leaseholds and personal chattels. If such chattels comprise policies of insurance, add here:—

"And as to the said policy or policies of insurances, either by way of surrender to the office or offices by which the same may have been granted, or otherwise."

(*g*) In an express power of sale in a mortgage of leaseholds by *demise*, the following clause should be here added:—

"And that after any such sale as aforesaid, the borrower, his executors, administrators, and assigns, shall stand possessed of the last —— days of the said term upon trust for the purchaser or purchasers of the premises hereby demised, and to assign and dispose of the same as such purchaser or purchasers shall direct."

half-yearly payment of interest, which shall become due on the security of these presents, shall have become in arrear for *three* calendar months; And every such notice as aforesaid shall be sufficient, though not addressed to any person or persons by name or designation, and notwithstanding the person or any of the persons affected thereby may be unborn, unascertained, or under disability: Provided also, that upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause or provision lastly hereinbefore contained has happened, or whether any default has been made in payment of any such principal money or interest as aforesaid, or whether any money remains owing on the security of these presents, or as to the necessity or expediency of the stipulations, subject to which such sale shall have been made, or otherwise as to the propriety or regularity of such sale; And, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards a purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly; And the remedy (if any) of the borrower in respect of any breach of the clause or provision lastly hereinbefore contained, or of any impropriety or irregularity whatsoever in any such sale, shall be in damages only; And it is hereby also agreed that upon any such sale as aforesaid the receipt of the lenders, for the purchase-moneys of the premises sold, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application, or being accountable for any loss or misapplication thereof; And it is hereby further agreed that the lenders shall by and out of the moneys which shall arise from any such sale as aforesaid, in the first place, reimburse themselves, or pay all the expenses incurred in or about such sale, or otherwise in relation to the premises; And, in the next place, apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents; And then pay the surplus (if any) unto the borrower, or as he shall direct; Provided always that if on a sale, &c. [*continue provision as to increment value and reversion duties on sale,* ante, *p.* 8, *clause* 6, *if applicable*]; And it is hereby also agreed that the aforesaid power of sale may be exercised by any person or persons, who, for the time being, shall be entitled to

Purchasers not to be bound to inquire whether such events have happened, &c.

Receipts of mortgagees to be effectual discharges.

Trusts of proceeds of sale.

IV. EXPRESS POWER OF SALE IN MORTGAGE OF FREEHOLDS.

receive and give a discharge for the moneys owing on the security of these presents: PROVIDED ALSO, that the lenders shall not be accountable for any involuntary losses which may happen in or about the exercise or execution of the aforesaid power and trusts, or any of them.

IN WITNESS, &c.

V. MORTGAGE *of* FREEHOLDS *in* FEE, *subject to* PRIOR CHARGE. PROVISO *for* REPAYMENT *of* PRINCIPAL *by* INSTALMENTS.

Parties and interpretation clause.

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (who, and his heirs, executors, administrators, and assigns, unless the contrary appears, are hereinafter included in the expression "the borrower"), of the one part, and [*mortgagee*], of, &c. (who, and his executors, administrators, and assigns, unless the contrary appears, are hereinafter included in the expression "the lender"), of the other part, WITNESSETH as follows:—

Testatum.

Covenant for payment of principal and interest.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, on the —— day of —— next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND ALSO, so long as any principal money remains due under this mortgage, to pay to the lender interest thereon at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

Second *testatum.*

Conveyance.

Subject to prior charge.

2. For the consideration aforesaid, the borrower, as beneficial owner, grants unto the lender ALL THAT [*describe parcels*], TO HOLD the premises unto and to the use of the lender, his heirs and assigns; Subject, nevertheless (*i*), to an indenture of mortgage dated the —— day of ——, 19—, and made between [*parties*],

(*h*) Stamp, *ad valorem* on amount secured.

(*i*) If there are several prior charges, say,

Subject to several prior charges.

"Subject, nevertheless, to the several mortgages, charges, and incumbrances specified in the schedule hereto, and to the several sums and interest thereby secured respectively as appears by the same schedule; AND ALSO subject," &c.

whereby the premises hereby conveyed were assured by the borrower to the use of [*prior mortgagee*], of, &c., his heirs and assigns, for securing the sum of £——, and interest thereon at the rate of —— per cent. per annum as therein mentioned; AND ALSO subject to the proviso for redemption following, namely,

V. MORTGAGE IN FEE SUBJECT TO PRIOR CHARGE.

3. PROVIDED ALWAYS, that if the borrower shall, on the —— day of ——, 19—, pay to the lender the sum of £——, and interest thereon at the rate of —— per cent. per annum, then the lender will, at the request and cost of the borrower, reconvey the premises to the use of the borrower, his heirs and assigns, or as he shall direct; Subject (*k*) to the said indenture of mortgage, and to all moneys thereby secured, if the same mortgage shall be then subsisting.

Proviso for redemption.

4. PROVIDED ALWAYS, that if the borrower shall pay to the lender the said sum of £—— by the instalments and at the times following, that is to say, the sum of £—— on the —— day of ——, 19—, and the further sum of £—— on the —— day of ——, 19—, and a like sum on the —— day of —— of every succeeding year, or within —— days after each of the said days, until the said sum of £—— shall be fully paid, and shall also pay interest at the rate aforesaid on the said sum of £——, or on such instalments thereof as shall for the time being remain unpaid upon the half-yearly days hereinbefore appointed for payment of interest, or within —— days after such days respectively, then and in such case the lender shall not call in or require payment of the said principal sum of £——, or any part thereof, except by such instalments as aforesaid (*l*).

Proviso for repayment by instalments.

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

6. [*Covenant against registration, see Precedent II.*, ante, *p.* 8.]

IN WITNESS, &c.

(*k*) If there are several prior charges, say,

"Subject to the said several mortgages, charges, and incumbrances, subject to which the same premises are hereinbefore expressed to be hereby granted, or such of them as shall be then subsisting, and to all moneys thereby secured."

Several prior charges.

(*l*) Any special provisions or covenants with regard to mode of payment of principal or interest, or as to insurance or otherwise, may be inserted in this and other following precedents as required.

VI. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

VI. COVENANT *to* Surrender Copyholds *by way of* Mortgage. [Variations *where there is a* Prior Mortgage *in* Notes.]

Parties.

THIS INDENTURE (*m*), made, &c., Between [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part;

Recital of mortgagor's seisin;

Whereas the borrower is seised of or entitled unto the fee simple in possession, according to the custom of the manor of ——, of and in the messuages or tenements, lands and hereditaments hereinafter described and covenanted to be surrendered (*n*), free from incumbrances;

of agreement for loan.

And whereas the lender has, at the request of the borrower, agreed to lend to him the sum of £——, upon having the repayment thereof with interest secured in manner hereinafter appearing:

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant for payment of principal and interest.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender [*covenant for payment of principal and interest*, ante, *p.* 18].

Second *testatum.*

2. For the consideration aforesaid, the borrower, as beneficial owner (*o*), hereby covenants with the lender that he the borrower,

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Stamp.

(*m*) Stamp, *ad valorem*, on amount secured at the rate of 2*s.* 6*d.* per 100*l.*, if this deed is to be the sole security; or at the rate of 6*d.* per 100*l.* if it is to be immediately followed by a surrender pursuant to the mortgage, in which case the surrender will bear the 2*s.* 6*d.* per 100*l.* stamp: see Stamp Act, 1891, s. 87 (4).

(*n*) If there is a prior mortgage, insert here the following words:—

Variation where there is a prior mortgage.

"Subject to a conditional surrender made the —— day of ——, whereby the said hereditaments were surrendered and assured by the borrower to the use of [*prior mortgagee*], his heirs and assigns, for securing to him the said [*prior mortgagee*], his executors, administrators, or assigns, the sum of £——, and interest, but otherwise," &c.

The recitals may (except where there is a prior mortgage) be omitted, if desired; they can be of little use, as the title appears on the court rolls. Where there is a prior mortgage its existence must be stated somewhere in the deed, and this may be conveniently done by recital.

(*o*) A covenant to surrender is a conveyance within sect. 7 of the Conveyancing Act, 1881: see sect. 2 (v).

VI. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

or his heirs, will forthwith, at his or their own cost, surrender into the hands of the lord, or lady, of the said manor, according to the custom of the manor, ALL THAT [*describe parcels*], to the use of the lender, his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services; subject to (*p*) a condition for avoiding such surrender if the borrower, his heirs or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon after the rate aforesaid.

Covenant to surrender.

3. AND the borrower hereby covenants with the lender that the hereditaments and premises hereby covenanted to be surrendered and conveyed shall henceforth be charged with the payment of all principal moneys and interest intended to be hereby secured; and that until surrender the borrower, his heirs and assigns, will stand possessed thereof in trust for the lender, his heirs and assigns, but subject to such equity of redemption as the same premises would have been subject to if surrendered.

Charge and declaration of trust (*q*).

4. AND the borrower hereby irrevocably appoints the lender, his executors, administrators, and assigns, and every of them, and his or their nominees or nominee, the attorney and attorneys of him the borrower, in his name and on his behalf, at any time when he or they shall think fit, to surrender the same premises, pursuant to the covenant in that behalf hereinbefore contained, and to execute and do all instruments, acts, and things which may be necessary for that purpose.

Power of attorney.

5. AND the borrower covenants with the lender that he the borrower, his heirs, executors, administrators, or assigns, will at all times during the continuance of this security, duly pay and perform all rents, fines, suits, and services respectively which shall become due and ought to be paid and performed respectively, in

Covenant to pay fines, &c. (*r*).

(*p*) If there is a prior mortgage, say,

"Subject to the conditional surrender hereinbefore referred to and to all moneys thereby secured, and also subject to," &c.,

Subject to prior mortgage.

as in the text.

(*q*) This clause expressly charging the copyholds is inserted so as to confer on the mortgagee the statutory power of sale.

(*r*) This covenant will enable the mortgagee, in case of a breach thereof, to exercise his statutory power of sale: see Conveyancing Act, 1881, s. 20 (iii).

VI. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

respect of the said hereditaments and premises hereinbefore covenanted to be surrendered.

6. [*Provision as to increment value and reversion duties*, ante, *p.* 8.]

IN WITNESS, &c.

VII. CONDITIONAL SURRENDER *of* COPYHOLDS.

Manor of —— in the County of ——.

BE IT REMEMBERED (*s*), that, on the —— day of, &c. [*mortgagor*], of, &c. one of the customary tenants of the said manor, came before [*steward*], gentleman, steward of the said manor, and in consideration of the sum of £—— to the said [*mortgagor*] then paid by [*mortgagee*], of, &c., did out of court surrender into the hands of the lord of the said manor by the hands and acceptance of the said steward by the rod, according to the custom of the said manor; ALL, &c. [*describe the lands*] with the appurtenances; [To such uses, upon such trusts, and for such intents and purposes as the said [*mortgagee*] shall at any time or times hereafter, by deed or will, appoint, and in default of such appointment (*t*)], To the use of the said [*mortgagee*], his heirs and assigns for ever, To HOLD by copy of court roll, at the will of the lord, according to the custom of the said manor, at the rents and services therefor due, and of right accustomed; Subject nevertheless to this condition, that, if the said [*mortgagor*], his heirs, executors, or administrators, shall pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £——, on the —— day of

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Stamp.

(*s*) As to stamp, see sect. 87 of the Stamp Act, 1891. The *ad valorem* stamp will be charged on the surrender: see *ante*, p. 20, note (*m*).

Surrender to such uses as mortgagee shall appoint

(*t*) The insertion of a power of this nature would be convenient, if the lord of the manor will permit it, because it seldom happens that a mortgagee of copyholds is admitted, and such a power enables an unadmitted mortgagee on the occasion of a transfer of the mortgage, or an exercise of the power of sale (if there is one), to confer on the transferee or purchaser by means of an appointment the right to be admitted. Supposing, too, the mortgagee should have found it necessary to be admitted, for the purpose of possession, &c., the power of appointment would enable him to reconvey the estate to the mortgagor, on payment of the debt, without a re-surrender. If the mortgagee should not have been admitted, an acknowledgment of satisfaction would be sufficient.

—— next, together with interest for the same in the meantime after the rate of —— per centum per annum, then this surrender is to be void and of no effect. VII. CONDITIONAL SURRENDER OF COPYHOLDS.

VIII. DEED *to accompany a* CONDITIONAL SURRENDER *of* COPYHOLDS, *containing* COVENANTS *for* PAYMENT *of* PRINCIPAL *and* INTEREST, *and for* TITLE.

THIS INDENTURE (*u*), made the —— day of ——, 19—, BETWEEN ——, of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part: WHEREAS the lender has this day lent unto the borrower the sum of £——, at interest after the rate herein mentioned, as the borrower hereby acknowledges; AND WHEREAS, for securing the repayment thereof, the borrower has this day surrendered into the hands of the lord of the manor of ——, in the county of ——, by the acceptance of [*steward*], steward of the said manor, according to the custom thereof, ALL THAT [*describe parcels*], [To such uses as the lender shall by deed appoint, and subject thereto], to the use of the lender, his heirs and assigns for ever, to be holden at the will of the lord, and according to the custom of the said manor, at and under the rents and services therefor due and of right accustomed; Subject nevertheless to a condition for avoidance of the said surrender, on payment by the borrower, his heirs, executors, or administrators, unto the lender, his executors, administrators, or assigns, of the sum of £——, on the —— day of —— next, with interest for the same in the meantime at the rate of —— per cent. per annum; AND WHEREAS, upon the treaty for the said loan, it was agreed, that, for the more effectually securing the payment of the said principal sum and interest, the borrower should enter into the covenants and make the declarations herein contained: NOW THIS INDENTURE WITNESSETH as follows:—

Parties. Recitals: of loan: of conditional surrender. Agreement for present deed of covenant. *Testatum.*

1. In pursuance of the said agreement, and for the considerations aforesaid, the borrower hereby covenants, &c.; [*Covenant for payment of principal and interest*, ante, *p.* 18.]

(*u*) Stamp, 6*d.* per 100*l.* (up to 10*s.*, see *ante*, p. 3) as a collateral security. The higher scale will be paid on the surrender: Stamp Act, 1891, s. 87 (4). Stamp.

VIII. DEED OF COVENANT TO ACCOMPANY CONDITIONAL SURRENDER OF COPYHOLDS.

2. [*Charge and declaration of trust*, ante, *p.* 21.]

3. [*Covenant to pay fines, &c.*, ante, *p.* 21.]

4. The borrower hereby covenants with the lender that he the borrower, at the time of making the surrender hereinbefore recited, had good right to surrender the premises so surrendered as aforesaid, in manner hereinbefore recited; And also, that it shall be lawful for the lender, his heirs, appointees, and assigns, peaceably and quietly to enter upon, and hold and enjoy the same premises, and to receive the rents and profits of the same, without any interruption whatsoever, by the borrower, his heirs or assigns, or any person or persons whomsoever; And that, free and discharged, or by the borrower, his heirs, executors, or administrators, effectually indemnified from and against all estates, rights, charges, and incumbrances whatsoever; And also, that the borrower and his heirs, and every person whosoever having or rightfully claiming, or to claim any estate, or interest in, or to, the premises, or any part thereof, will from time to time, and at the cost of the borrower, his heirs, executors, or administrators, until sale or foreclosure, and thenceforth at the cost of the person or persons requiring the same, execute and do all such assurances and acts, for more effectually assuring the said premises, and every part of the same, to the use of the lender, his heirs [appointees], and assigns, according to the custom of the said manor, as shall be reasonably required.

Covenant by mortgagor that he had good right to surrender (*x*);

for quiet enjoyment after default;

free from incumbrances;

and for further assurance.

[*Provision as to increment value and reversion duties on sale, p.* 8.]

In witness, &c.

IX. MORTGAGE *of* Leaseholds *by* Demise (*y*) *to one* Mortgagee.

Parties.

THIS INDENTURE (*z*), made the —— day of ——, 19—, Between [*mortgagor*], of, &c. (hereinafter called "the bor-

(*x*) This deed, not containing any "*conveyance*" within sect. 7 of the Conveyancing Act, 1881, requires express covenants for title, no statutory covenants for title being capable of being therein implied.

(*y*) A mortgage of leaseholds should be by sub-demise, as in this precedent, if they are held at a high rent or subject to onerous covenants,

(*z*) Stamp, *ad valorem* on amount secured.

rower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part: WHEREAS, by an indenture of lease, dated, &c., and made between [*parties*], ALL THAT [*describe parcels fully from the lease*] was demised to the said [*lessee*], his executors, administrators, and assigns, for the term of —— years, at the yearly rent of £——, and subject to the covenants on the lessee's part and conditions therein contained, which said leasehold premises, by virtue of certain mesne assignments and acts in the law, and ultimately by an indenture of assignment, dated, &c., and made between [*parties*], have become and are now vested in the borrower for all the residue of the said term; AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment thereof, with interest after the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

IX. MORTGAGE OF LEASEHOLDS BY DEMISE.

Recital of lease.

Of agreement for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged) he the borrower hereby covenants [*Covenant by mortgagor for payment of principal and interest*, ante, *p.* 18].

2. For the consideration aforesaid, he the borrower hereby, as beneficial owner, demises unto the lender, ALL THAT the said [messuage or tenement] hereinbefore described, and all other the

Second *testatum.*

Parcels.

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otherwise the mortgage may be by assignment (next precedent). As to mortgages by sub-demise, see Elphinstone's Introduction to Conveyancing, 6th ed. p. 190.

When a mortgage is paid off, the sub-term does not become a "satisfied term," and a formal surrender is required: *Re Moore and Hulm*, [1912] 2 Ch. 105. As to entering notice of sub-demise on the register, see L. T. A. 1875, s. 50. If there is no trust of the nominal reversion the mortgagee cannot be registered as proprietor of the term: see L. T. A. 1875, s. 11; L. T. A. 1897, sched. 1. *Secus*, if there is such a trust, L. T. A. 1875, s. 11 (2). As to the rights and liabilities of a mortgagee by sub-demise when the mortgagor becomes bankrupt and the trustee in bankruptcy or the official receiver disclaims, see Bankruptcy Act, 1914, s. 54; *Re Baker*, [1901] 2 K. B. 628; *Re Holmes*, [1908] 2 K. B. 812; *Re Cohen*, [1905] 2 K. B. 704; *Re Carter and Ellis*, [1905] 1 K. B. 735. For a form of assignment to a purchaser on a sale by a mortgagee under a mortgage by demise, see Conveyances, Precedent XXVIIIA., Vol. I. p. 370.

IX. MORTGAGE OF LEASEHOLDS BY DEMISE.

premises (if any) comprised in the hereinbefore recited indenture of lease: To HOLD all the premises unto the lender, his executors, administrators, and assigns, henceforth for all the residue now unexpired of the said term of —— years, except the last day thereof.

Habendum.

Declaration of trust of nominal reversion.

3. AND the borrower hereby declares that he and his executors, administrators, and assigns will henceforth stand possessed of the reversion hereby excepted out of the said term in trust for the lender, his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall from time to time direct, subject to such right of redemption as may for the time being be subsisting by virtue of this mortgage; AND the borrower hereby authorises and empowers the lender and his assigns to appoint a new trustee or new trustees of the said reversion at any time or times in the place of the borrower, or his assigns or any trustee appointed under this power, as if he or they were incapable of acting in the trusts thereof hereby declared.

Power of attorney.

4. AND the borrower hereby irrevocably appoints the lender, his executors, administrators, and assigns, and his or their nominees or nominee, the attorneys and attorney of him the borrower, in his name and on his behalf, at any time when he or they shall think fit, to assign the said excepted reversion to the lender, his executors, administrators, or assigns, or as he or they shall direct, subject to such equity of redemption (if any) subsisting as aforesaid, and to execute and do all deeds, instruments, and things which may be necessary or proper for that purpose.

Proviso for redemption.

5. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate of —— per cent. per annum, computed from the date hereof, the lender, his executors, administrators, or assigns, will, at the request and at the cost of the borrower, his executors, administrators, or assigns, surrender or otherwise reconvey the premises unto him or them, or as he or they shall direct (*a*).

(*a*) Insert here, if desired, proviso for reduction of interest on punctual payment (*ante*, p. 10), or any other stipulations with reference to the mode of payment of the moneys secured by the mortgage, for which see Index to Precedents.

IX. MORTGAGE OF LEASEHOLDS BY DEMISE.

6. And the borrower hereby covenants with the lender to keep the said messuage and premises at all times during the continuance of this security in good and substantial repair, and insured against loss or damage by fire in accordance with the covenants of the said lease, and on demand to produce to the lender, his executors, administrators, or assigns, the policy of such insurance, and the receipt for every premium payable in respect thereof (*b*). Covenant for repair and insurance.

7. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

In witness, &c.

X. MORTGAGE *of* Leaseholds *by* Assignment.

THIS INDENTURE (*c*), made, &c., Between [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part: Whereas, by indenture of lease dated, &c., and made between [*parties*], the said [*lessor*] demised unto the borrower [*describe parcels*]: To hold the same unto the borrower from the —— day of —— then next, for the term of —— years, at the rent, and subject to the covenants on the part of the lessee to be performed, and conditions therein contained; And whereas, by another indenture of lease, dated, &c. [*recite, as before, lease of other property intended to be comprised in the mortgage* (*d*)]; And whereas the lender has, at the request of the borrower, agreed to lend to him the sum of £——, on having the repayment

Parties.

Recitals: of leases:

of agreement for loan.

(*b*) For fuller form of covenant to insure, see next precedent. Add here any clauses excluding the application of statutory provisions or other special stipulations with regard to the mortgaged property.

(*c*) Stamp, *ad valorem* on amount secured. Stamp

(*d*) If the leases were not granted to the mortgagor, but passed through the hands of intermediate owners, recite leases accordingly, and add—

"And whereas the premises comprised in the said several indentures of lease have, by virtue of certain mesne assignments or acts in the law, become absolutely vested in the borrower for all the residue of the said terms of —— years and —— years respectively, at the rents, and subject to the lessee's covenants and conditions reserved by and contained in the said indentures of lease respectively." Reference to mesne assignments.

X. MORTGAGE BY ASSIGNMENT OF LEASEHOLDS.

thereof with interest secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

First *testatum*.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*Covenant by mortgagor for payment of principal and interest*, ante, *p.* 18].

Covenant for payment of principal and interest.

Second *testatum*.

2. For the consideration aforesaid, he the borrower hereby, as beneficial owner, assigns unto the lender ALL THOSE the said several pieces or parcels of ground, messuages, and premises in the said indentures of lease described, and thereby demised respectively; TO HOLD the same premises unto the lender henceforth for all the several residues now unexpired of the said several terms of —— years granted by the said several indentures of lease, subject to the proviso for redemption following.

Assignment of leaseholds.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £—— with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his executors, administrators, or assigns, reassign the premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct (*e*).

Covenant by mortgagor to keep mortgaged premises insured against fire (*f*).

4. AND the borrower hereby covenants with the lender, at all times during the continuance of this security, to keep the several messuages and buildings respectively erected and being on the premises hereby assigned insured against loss or damage by fire, in the aggregate sum of £—— at the least, in the —— Insurance Office, or in some other fire insurance office, to be approved by the lender, his executors, administrators, or assigns [*or*, in accordance with the covenants of the respective indentures of lease under which the same are respectively held], and from time to time duly and punctually to pay all premiums and moneys necessary for effecting and keeping up such insurances respectively, and on demand to produce to the lender, his executors, administrators, or assigns, all the policies of such insurances as aforesaid,

(*e*) Add power of sale if necessary: see *ante*, p. 15; and see note (*e*), *ibid.*

(*f*) For a fuller form of covenant not relying on the statutory provisions, see *ante*, Precedent III. p. 12.

or any of them, and the receipts for all premiums and payments in respect thereof respectively, or any of them [or other proper and sufficient evidence of the subsistence of such policies]; And that in case of the refusal or failure of the borrower, his heirs, executors, administrators, or assigns, to produce any such policies or policy or receipts or receipt [or such other evidence] as aforesaid, in pursuance of the covenant in that behalf hereinbefore contained, it shall be presumed that the insurances or insurance to which such policies or policy or receipts or receipt, if effected or given, would relate, are or is not being kept up by or on behalf of the mortgagor in accordance with this mortgage; And it shall be lawful for the lender, his executors, administrators, or assigns, at any time thereafter, to effect, under the statutory power in that behalf, insurances or an insurance of the premises in respect of which no such policies or policy or receipts or receipt (as the case may be) shall be produced, to an amount not exceeding £——.

Covenant against registration (*g*).

5. The borrower for himself and his assigns hereby covenants with the lender that during the continuance of this security no person or persons or corporation shall be registered under the Land Transfer Acts, 1875 and 1897, as proprietor or proprietors of the leasehold hereditaments hereby mortgaged, or any part thereof, without the consent in writing of the lender, and that the costs incurred by the lender in lodging from time to time a caution against such registration [and after any person or persons or corporation shall have been registered as proprietor or proprietors of the reversion expectant on any term of years granted by any of the said indentures of lease in registering notice of such term pursuant to the said Acts], and after the power of sale shall have become exerciseable in registering the lender as proprietor under the said Acts of the leasehold hereditaments hereby mortgaged, shall be deemed to be costs properly incurred by the lender under these presents.

6. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

In witness, &c.

(*g*) See *ante*, p. 8, note (*o*). In the case of a mortgage by demise, if there is no declaration of trust of the nominal reversion the words in brackets will be omitted.

XI. ASSIGNMENT OF RENEWABLE LEASEHOLDS.

XI. MORTGAGE *by* ASSIGNMENT *of* RENEWABLE LEASEHOLDS, *with* COVENANT *to* RENEW (*h*).

Parties.

Recitals: of lease;

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS by an indenture of lease, dated, &c., and made between the governors and guardians of the —— Hospital, of the first part, [A. B.], of the second part, and the said [*mortgagor*], of the third part, it was witnessed that, for the considerations therein expressed, the said governors and guardians (by the direction of the said [A. B.]), demised unto the borrower, his executors, administrators, and assigns [*describe the parcels*], TO HOLD the premises from the —— day of —— for the term of ninety-nine years, at the rent of a peppercorn for the first three years, and for the remainder of the term (save the last half-year), at the yearly rent of £——, payable quarterly without any deduction, and for the last half-year at the rent of £——, and subject to the several covenants and agreements on the lessee's part in the indenture now in recital

of agreement for loan.

contained; AND WHEREAS the lender has agreed to lend to the borrower the sum of £—— upon having the repayment thereof with interest secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH as follows:—

Testatum.

Covenant for payment of principal and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest*, ante, *p.* 18].

Second *testatum.*

Assignment.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby, as beneficial owner, assigns unto the lender ALL and singular the said piece or parcel of ground, messuages, and premises comprised in and demised by the hereinbefore recited indenture of lease, together with the right to the renewal of the said lease under or by virtue of the cove-

(*h*) Renewable leaseholds should be mortgaged by assignment, not by demise. If the mortgagor purchases the reversion, he does so for the benefit of the mortgagees of the lease: *Leigh* v. *Burnett*, 29 Ch. D. 231.

Stamp.

(*i*) Stamp, *ad valorem* on amount secured.

XI. ASSIGNMENT OF RENEWABLE LEASEHOLDS.

nant or proviso in that behalf therein contained, To HOLD the premises unto the lender henceforth for all the unexpired residue of the said term of ninety-nine years, subject to the proviso for redemption following.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrower, his heirs, executors, or administrators, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest for the same in the meantime, after the rate of —— per cent. per annum, without any deduction, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his executors, administrators, or assigns, re-assign the premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

4. AND the borrower hereby covenants with the lender as follows:—

Covenant to insure.

(1) That he the borrower, his executors or administrators, will, &c. [*covenant to insure against fire*, ante, *p.* 12 *or p.* 28].

Covenant by borrower to procure renewal.

(2) That he the borrower, his executors or administrators, will, from time to time during the continuance of this security, at his or their own cost, at the usual and accustomed time or times of renewal, apply for and endeavour to obtain a new lease of the premises comprised in the said indenture of lease, pursuant to the covenant in that behalf therein contained, the lender, his executors, administrators, or assigns, doing and concurring in all acts which may be necessary or expedient for the purpose of obtaining such renewal; and that immediately after obtaining every such new lease, the borrower will assign the same, and the premises therein comprised, to the lender, his executors, administrators, and assigns, subject to such equity of redemption as shall be then subsisting by virtue of these presents.

Declaration of trust of renewed lease.

(3) AND that, in the meantime the borrower, his executors and administrators, will stand possessed of such renewed lease, in trust for the lender, his executors, administrators, and assigns, for securing the said principal and interest moneys hereby secured.

And in default that mortgagee may renew.

(4) AND further, that in case the borrower, his executors, administrators, or assigns, shall refuse or neglect to obtain such renewed lease, and to pay all fines, fees, and costs of and incident to such renewal, it shall be lawful for the lender, his executors, administrators, or assigns, to obtain such new lease as aforesaid, and that he the borrower, his executors, administrators, or assigns,

XI. ASSIGNMENT OF RENEWABLE LEASEHOLDS.

will thereupon pay to the lender, his executors, administrators, or assigns, all sums of money which he or they shall expend in and about every such renewal, with interest thereon at the rate of —— per cent. per annum, from the time or respective times of the expenditure thereof; AND that all sums of money so to be expended by the lender, his executors, administrators, or assigns, and interest for the same as aforesaid, shall be a charge upon the said renewed lease and the premises therein comprised.

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8 (*ii*).]

6. [*Covenant against registration, see Precedent II., clause* 5, ante, *p.* 8.]

7. [*Restriction as to leasing powers*, ante, *p.* 9.]

IN WITNESS, &c.

XII. MORTGAGE *of* FREEHOLDS *and* COPYHOLDS. PROVISO *giving* MORTGAGEE RIGHT *of* CONSOLIDATION.

Parties.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, WITNESSETH as follows:—

Testatum.

Covenant to pay principal and interest.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest*, ante, *p.* 18].

Second *testatum*.

2. For the consideration aforesaid the borrower hereby, as beneficial owner, conveys [*conveyance of freeholds to mortgagee in fee*, ante, *p.* 7].

Grant of freeholds and proviso for redemption.

3. [*Proviso for redemption*, ante, *p.* 7.]

Third *testatum*.

Covenant to surrender copyholds subject to condition for avoidance corresponding

4. For the consideration aforesaid, the borrower, as beneficial owner, hereby covenants with the lender that he the borrower will forthwith, at his own cost, surrender into the hands of the lord or lady of the said manor, according to the custom thereof, ALL THAT [*describe parcels*], to the use of the lender, his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, but subject to a

(*ii*) See, as to these duties in the case of renewable leaseholds, Vol. I. p. 508.

Stamp.

(*k*) Stamp, *ad valorem* on amount secured.

condition for avoiding such surrender corresponding to the proviso for redemption hereinbefore contained as to the freehold hereditaments hereby granted. XII. MORTGAGE OF FREEHOLDS AND COPYHOLDS.

5. [*Charge and declaration of trust of copyholds*, ante, *p.* 21, *clause* 3.] to proviso for redemption of freeholds.

6. [*Power of attorney to effect surrender, ibid., clause* 4.]

7. [*Covenant by mortgagor to pay fines, &c., ibid., clause* 5.] Proviso giving mortgagee right of consolidation.

8. PROVIDED ALWAYS, and it is hereby agreed that the 17th section of the Conveyancing Act, 1881, shall not apply to these presents or to the security intended to be hereby made.

9. [*Covenant against registration, see* ante, *p.* 8, *clause* 5.]

10. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8, *clause* 6.]

IN WITNESS, &c.

XIII. MORTGAGE *of an* ESTATE *comprising* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS *held under several* LEASES (*by* DEMISE) (*l*). COVENANT *by* MORTGAGOR *for* INSURANCE. VARIATION *where* OBLIGATION *to* INSURE *is* EXCLUDED. PROVISO (1) EXTENDING *or* (2) LIMITING STATUTORY POWER *of* SALE.

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part: WHEREAS the borrower is seised of or entitled to the several manors, lands, and hereditaments, particularly described in the first schedule hereto, in fee simple in possession, and is also seised of or entitled to the lands and hereditaments particularly described in the second schedule hereto, to him and his heirs, according to the customs of the several manors mentioned in the same schedule, whereof such last-mentioned lands and hereditaments are respectively holden, and subject to the rents and services therefor due and accustomed respectively, and is also possessed of or entitled to the several messuages and lands particularly described in the third schedule hereto, for the residue of the several terms therein respectively Parties. Recitals: of mortgagor's title:

(*l*) As to mortgages by sub-demise, see *ante*, p. 24, note (*y*).

(*m*) Stamp, *ad valorem* on amount secured. Stamp.

XIII. MORTGAGE OF ESTATE COMPRISING FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

granted by the several leases, which, and the mesne assignments whereof respectively are also mentioned in such last-mentioned schedule, and are therein set opposite to the premises to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively; AND WHEREAS the lender has agreed to lend to the borrower the sum of £—— upon having the repayment of the same, with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

of agreement for loan.

Testatum.

Covenant for payment of principal and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*Covenant for payment of principal and interest*, ante, *p.* 18.].

Second *testatum.*

Grant of freeholds.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, grants unto the lender, ALL THAT and those the mansion house called —— Hall, with gardens, pleasure grounds, and park thereto belonging, and the several manors, messuages, or dwelling-houses, lands, and hereditaments situate in the parishes of —— and —— in the county of ——, and particularly described in the first schedule hereto, and delineated with the abuttals in the plan drawn on these presents and therein coloured [*red*]; TO HOLD the premises hereby granted unto and to the use of the lender, his heirs and assigns, subject to the proviso for redemption hereinafter contained.

Third *testatum.*

Covenant to surrender copyholds.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, hereby covenants with the lender that he the borrower, or his heirs, will forthwith, at his or their cost, surrender into the hands of the several lords or ladies of the manors of which the same are respectively holden, and according to the several customs of such manors respectively, ALL THOSE messuages, lands, and hereditaments, situate in the parishes of —— and —— aforesaid, and particularly described in the second schedule hereto, and delineated with the abuttals in the said plan, and therein coloured [*yellow*]; to the use of the lender, his heirs and assigns, according to the several customs of the said manors, and at and under the several rents, fines, suits, and services therefor due or accustomed respectively, but subject to conditions for avoiding all such surrenders as aforesaid, respectively corresponding to the proviso for

redemption hereinafter contained as to the freehold and leasehold premises hereby granted and assigned respectively [*Charge, and declaration of trust and power of attorney, and covenant by mortgagor to pay fines, &c.*, ut ante, *p.* 21].

XIII. MORTGAGE OF ESTATE COMPRISING FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

Fourth *testatum.*

4. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender, ALL THOSE the several messuages and pieces or parcels of land and premises situate in the parishes of —— and —— aforesaid particularly described in the third schedule hereto, and delineated with the abuttals in the said plan and therein coloured [*blue*]; TO HOLD the premises hereby demised unto the lender, his executors, administrators, and assigns, for the respective residues of the several terms therein respectively granted as aforesaid, except the last day of each such term. Subject to the proviso for redemption hereinafter contained.

Demise of leaseholds.

Proviso for redemption.

5. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the premises hereby granted unto the borrower, his heirs and assigns, and surrender the premises hereby demised unto the borrower, his executors, administrators, and assigns, or as he or they shall direct.

Covenant by mortgagor to keep mortgaged premises insured against fire (*n*).

6. AND the borrower hereby covenants with the lender, at all times during the continuance of this security, to keep the several messuages and buildings erected and being on the premises hereby granted, and covenanted to be surrendered respectively, insured against loss or damage by fire, in the aggregate sum of £—— at the least, in the —— Insurance Office, or in some other fire insurance office, to be approved by the lender, his executors, ad-

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(*n*) Where it is not intended that the mortgagor shall insure the premises, the following may be substituted for clause 6:—

No insurance required.

"PROVIDED ALWAYS, and it is hereby declared, that no obligation shall be deemed to be imposed under or by virtue of these presents upon the borrower, his heirs, executors, administrators, or assigns, to effect any insurance of any part of the premises herein comprised."

XIII. MORTGAGE OF ESTATE COMPRISING FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

ministrators, or assigns, and to keep the messuage and buildings erected and being upon the premises hereby demised insured against loss or damage by fire in accordance with the respective covenants of the said several indentures of lease mentioned in the third schedule hereto, and from time to time duly and punctually to pay all premiums and moneys necessary for effecting and keeping up such insurances respectively, and on demand to produce to the lender, his executors, administrators, or assigns, all the policies of such insurances as aforesaid, or any of them, and the receipts for all premiums and payments in respect thereof respectively, or any of them [or other proper and sufficient evidence of the subsistence of such policies (*o*)]; And that in case of the refusal or failure of the borrower, his heirs, executors, administrators, or assigns, to produce any such policies or policy or receipts or receipt [or such other evidence] as aforesaid, in pursuance of the covenant in that behalf hereinbefore contained, it shall be presumed that the insurances or insurance to which such policies or policy or receipts or receipt, if effected or given, would relate, are or is not being kept up by or on behalf of the borrower in accordance with this mortgage; and it shall be lawful for the lender, his executors, administrators, or assigns, at any time thereafter, to effect, under the statutory power in that behalf, insurances or an insurance of the premises in respect of which no such policies or policy or receipts or receipt (as the case may be) shall be produced, to the amounts following, that is to say, as to the said messuages and buildings erected and being on the premises hereby granted and covenanted to be surrendered respectively to an aggregate amount not exceeding £——, and as to the said messuage and buildings erected and being on the premises hereby demised to an amount not exceeding £——.

Declaration of trust of nominal reversion.

7. And the borrower hereby declares that he and his executors, administrators, and assigns, will henceforth stand possessed of the several reversions hereby excepted out of the several terms in the premises hereby demised as aforesaid in trust for the lender, his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall from time to time direct, subject to such right of redemption as may for the time being be subsisting by virtue of this mortgage.

(*o*) The policies, &c. as to the leaseholds may be required to be delivered to the lessor.

XIII. MORTGAGE OF ESTATE COMPRISING FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

8. And the borrower hereby authorises and empowers the lender and his assigns to appoint a new trustee or new trustees of the said several reversions hereby excepted as aforesaid at any time or times in the place of the borrower or his assigns, or any trustee appointed under this power, as if he or they were incapable of acting in the trusts thereof hereby declared.

Power to appoint new trustees of nominal reversions.

9. And the borrower hereby irrevocably appoints the lender, his executors, administrators, and assigns, and his or their nominees or nominee, the attorneys and attorney of him the borrower, in his name and on his behalf, at any time when he or they shall think fit, to assign the said excepted reversions to the lender, his executors, administrators, or assigns, or as he or they shall direct, subject to such equity of redemption (if any) subsisting as aforesaid, and to execute and do all deeds, instruments, and things which may be necessary or proper for that purpose.

Power of attorney.

10. [*Covenant against registration as in Precedent X.*, ante, *p.* 29, *saying*, "Freehold and leasehold hereditaments," *instead of* "Leasehold hereditaments."]

Limitation of statutory power of sale.

11. Provided also, and it is hereby agreed, that the lender, his executors, administrators, or assigns, shall not exercise the power of sale conferred on mortgagees by the Conveyancing Act, 1881, unless and until a notice shall have been served in accordance with the 20th section of the said Act, and default shall have been made in payment of the mortgage money, or of part thereof, for [*six*] calendar months after such service, or unless and until some interest under this security shall have become in arrear and unpaid for [*three*] calendar months after the same shall have become due (*p*) [*insert any other restriction on the exercise of the power of sale which may be agreed upon*]: Provided always, that except as is otherwise hereinbefore provided, all the provisions of the Conveyancing Acts, 1881 to 1911, with reference to sale by mortgagees, shall, as regards the protection of purchasers, or otherwise howsoever, remain in full force and be exerciseable or available by the lender, his executors, administrators, and assigns (*pp*).

(*p*) Under the statutory power (C. Act, 1881, s. 20) the mortgagee cannot sell until default has been made in payment of principal after three months' notice, or interest is in arrear for two months.

(*pp*) If instead of limiting the statutory power of sale it is desired to extend it, the following stringent provision may be used; but it should not be inserted without preserving evidence that the mortgagor's attention

XIII. MORTGAGE OF ESTATE COMPRISING FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

12. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8.]

13. PROVIDED ALWAYS, that the powers of leasing conferred on mortgagors and mortgagees while in possession respectively by the Conveyancing Act, 1881, shall be varied and extended as follows, that is to say, [*Specify the variations agreed upon*].

Variation of statutory leasing powers.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

XIV. MORTGAGE *in* FEE *to secure a* PRESENT LOAN *and* FUTURE ADVANCES (*q*).

THIS INDENTURE (*r*), dated the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter

Parties.

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was specially called thereto, and that he assented to it (*Craddock* v. *Rogers,* W. N. (1885) p. 134):—

"PROVIDED ALWAYS, that if default shall be made in payment of the said principal sum of £——, and interest thereon as aforesaid, on the —— day of ——, 19—, then it shall be lawful for the lender, his executors, administrators, or assigns, at any time thereafter, to exercise the power of sale conferred on mortgagees by the Conveyancing Act, 1881, without any restriction as to notice or otherwise, it being the express intention of the parties hereto that the 20th section of that Act shall not apply to these presents or to the security intended to be hereby made."

(*q*) Where a mortgage is made to secure future advances or a balance of account current, the mortgagee cannot claim priority thereunder as against a subsequent incumbrancer in respect of any advances made after notice of the subsequent incumbrance, unless with the express consent of such incumbrancer: *Hopkinson* v. *Rolt,* 9 H. L. C. 514; *Daun* v. *City of London Brewery Co.,* L. R. 8 Eq. 155; *Menzies* v. *Lightfoot,* L. R. 11 Eq. 459; and see as to equitable mortgages, *London and County Banking Co.* v. *Ratcliffe,* 6 App. Ca. 722.

Stamp.

(*r*) A stamp will be required of sufficient value to cover the *ad valorem* duty of the present loan, and the probable amount of the future advances: see Stamp Act, 1891, s. 88; *Suffield* v. *I. R. Commrs.,* [1908] 1 K. B. 865.

XIV. MORTGAGE IN FEE TO SECURE LOAN AND FUTURE ADVANCES.

called "the lender"), of the other part, WITNESSETH as follows:—

Testatum.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns, on the —— day of ——, the sum of £——, with interest thereon in the meantime at the rate of —— per centum per annum; AND also on such —— day of —— or —— day of —— as shall first happen after every further sum of money shall be paid or advanced to the borrower or become owing by him to the lender on the security of these presents to pay the same with interest thereon at the rate aforesaid as from the time or respective times of the same being so paid and advanced or becoming owing as aforesaid; AND also so long as the said sum of £——, or any sum or sums so paid and advanced or becoming owing as aforesaid, or any part thereof respectively, shall remain due under this security after the days hereinbefore appointed for payment thereof respectively, to pay to the lender, his executors, administrators, or assigns, interest thereon, at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

Covenant for repayment of present loan and future advances, and interest.

Second *testatum.*

2. For the consideration aforesaid, the borrower hereby, as beneficial owner, grants unto the lender, ALL THAT [*describe parcels*]; TO HOLD all the premises unto and to the use of the lender, his heirs and assigns; subject to the proviso for redemption hereinafter contained.

Grant in fee.

Habendum.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the said sum of £——, with interest thereon in the meantime at the rate aforesaid, and shall also, on such —— day of —— or —— day of —— as shall first happen after any further sum shall be so paid or advanced or become owing as aforesaid, pay the same to him or them, with interest thereon at the rate aforesaid as from the time or times of such sum being so paid or advanced or becoming owing, then the lender, his executors, administrators, or assigns, shall, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the premises hereby granted to the use of the borrower, his heirs and assigns, or as he or they shall direct.

4. [*Covenant against registration, see* ante, *p.* 8.]

XIV. MORTGAGE IN FEE TO SECURE LOAN AND FUTURE ADVANCES.

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

[*Insert any special covenants or provisoes as to payment of principal and interest, insurance, &c. from preceding precedents.*]

IN WITNESS, &c.

XV. MORTGAGE *in* FEE, *of* FREEHOLDS, PART *of* PROPERTY *comprised in a* PRIOR MORTGAGE; *the* PRIOR MORTGAGEE *concurs to* POSTPONE *his* SECURITY (*s*).

Parties.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*prior mortgagee*], of, &c. (hereinafter called "the prior mortgagee"), of the first part; [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part;

Recitals: of prior mortgage;

WHEREAS, by an indenture, dated, &c., and made between the prior mortgagee, of the one part, and the borrower, of the other part, the hereditaments hereby granted were, with other hereditaments, conveyed unto the prior mortgagee, his heirs and assigns, by way of mortgage to secure the repayment by the borrower, his heirs, executors, administrators, or assigns, on the —— day of ——, to the prior mortgagee, his executors, administrators, or assigns, of the sum of £—— with interest for the same in the meantime, at the rate of —— per cent. per annum; AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment of the same with interest thereon, at the rate aforesaid, secured in manner hereinafter appearing; AND WHEREAS the prior mortgagee has, at the request of the borrower, agreed to join in these presents for the purpose of postponing his security under the hereinbefore recited indenture of mortgage to the security intended to be hereby effected, so far as relates to the said hereditaments hereinafter expressed to be hereby granted, in manner hereinafter appearing.

of agreement for present loan;

of consent of prior mortgagee to postpone security.

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to pay principal and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £——, now paid to the borrower by the lender (the

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(*s*) A notice of the postponement should be indorsed on the mortgage to the prior mortgagee.

Stamp.

(*t*) Stamp, *ad valorem* on amount secured.

receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender, &c. [*Covenant to pay principal and interest*, ante, *p.* 18].

XV. MORTGAGE IN FEE WITH CONCURRENCE OF PRIOR MORTGAGEE.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the prior mortgagee hereby, as mortgagee, at the request of the borrower, grants and releases (*u*); AND the borrower, as beneficial owner, hereby grants and confirms unto the lender, ALL THAT [*describe parcels*], TO HOLD all the premises unto and to the use of the lender, his heirs and assigns, free and discharged from the said sum of £—— [*the prior mortgage debt*], and all interest now or hereafter to accrue due for the same, and every part thereof respectively, and from all claims and demands under or by virtue of the hereinbefore recited indenture of mortgage; subject nevertheless to the proviso for redemption hereinafter contained.

Second *testatum.*

3. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the premises hereby granted to the use of the prior mortgagee, his heirs and assigns, subject to such right or equity of redemption as the same premises would have been subject to on payment of the said sum of £—— [*the prior mortgage debt*] and interest thereon, and to all such powers, authorities and provisions as would have been subsisting or exerciseable in relation thereto, under or by virtue of the hereinbefore recited indenture of mortgage if these presents had not been executed.

Proviso for redemption.

4. It is hereby agreed and declared that, subject to this security, the hereinbefore recited indenture of mortgage, and all powers therein or thereby contained or implied, shall remain in full force; AND further, that if on a sale of the premises hereby mortgaged, or any part thereof, under the power of sale vested in the lender by virtue of these presents, there shall remain any surplus moneys after discharge of all moneys hereby secured, such surplus moneys shall, subject to clause 6 hereof, be paid to the

Prior mortgage to remain in force subject to this security.

Application of surplus moneys on sale.

(*u*) As to the implied covenant against incumbrances by a person who conveys and is expressed to convey "as mortgagee," see sect. 7, sub-sect. (1) (F) of the Conveyancing Act, 1881. As to direction "as beneficial owner," see sub-sect. (2) of the same section.

XV. MORTGAGE IN FEE WITH CONCURRENCE OF PRIOR MORTGAGEE.

prior mortgagee, his executors, administrators, or assigns, as such mortgagee or mortgagees, whose receipt for the same shall be a sufficient discharge.

5. [*Covenant against registration, see* ante, *p.* 8.] (*x*).

6. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8.]

Acknowledgment of right to production of title deeds.

7. The prior mortgagee hereby acknowledges the right of the lender to production of the hereinbefore recited indenture of mortgage, and of the several deeds and documents of title mentioned in the schedule hereto, and to delivery of copies thereof respectively; And the lender hereby acknowledges the right of the prior mortgagee to the production of these presents (*y*), and to the delivery of copies thereof.

In witness, &c.

The Schedule above referred to.

XVI. MORTGAGE *of* Freeholds *in* Fee *by* Appointment *under a* Power.

Parties.

THIS INDENTURE (*z*), made the —— day of ——, 19—, Between [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part;

Recitals: of power of appointment;

Whereas by an indenture, dated the —— day of ——, 19—, and made between [*parties*], the hereditaments hereinafter expressed to be hereby appointed were, for the considerations therein mentioned, conveyed and assured to such uses, upon such trusts, and for such intents and purposes as the borrower should by deed appoint, and in default of such appointment to the use of the borrower for his life, with

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(*x*) Here insert any special covenants and provisions, *e.g.*, restriction on mortgagor's leasing powers, *ante,* p. 9; covenant to insure, *ante,* p. 12 or p. 28, &c., &c.

(*y*) If any of the documents of title relate exclusively to the property comprised in this mortgage, they will probably be handed over to the mortgagee. In that case add here—

Acknowledgment of right to production when part of deeds handed over.

"And of the deeds and documents relating to the premises hereby granted, mentioned in the second schedule hereto (the receipt of which from the prior mortgagee the lender hereby acknowledges), and to delivery of copies thereof respectively.

"In witness, &c."

(*z*) Stamp, *ad valorem* on amount secured.

XVI. MORTGAGE IN FEE BY APPOINTMENT.

divers remainders over; AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:— of agreement for loan.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*Covenant for payment of principal and interest*, ante, *p.* 18]. First *testatum*. Covenant for payment of principal and interest.

2. In further pursuance of the said agreement and for the consideration aforesaid, the borrower, as beneficial owner, in exercise of the power in that behalf given to him by the hereinbefore recited indenture, and of every other power (if any) him hereunto enabling, appoints, and by virtue of his estate and interest grants and confirms, unto the lender, ALL, &c. [*describe parcels*], TO HOLD the same unto and to the use of the lender, his heirs and assigns, subject to the proviso for redemption following. Second *testatum*. Appointment in fee.

3. PROVIDED that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, shall, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the premises hereby appointed to the use of the borrower, his heirs or assigns, or as he or they shall direct. Proviso for redemption.

4. [*Covenant against registration, see Precedent II.*, ante, *p.* 8.]

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

IN WITNESS, &c.

XVII. MORTGAGE *by* TENANT *for* LIFE *of* SETTLED FREEHOLDS *under the Settled Land Acts to raise* MONEY *for* ENFRANCHISEMENT. ACKNOWLEDGMENT *of* MORTGAGEE'S RIGHT *to* PRODUCTION *of* TITLE DEEDS, *and* UNDERTAKING *for* SAFE CUSTODY (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the bor- Parties.

XVII. MORTGAGE BY TENANT FOR LIFE FOR ENFRANCHISEMENT.

rower"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS, by an indenture of settlement, dated, &c., and made between [*parties*], the several manors, lands, and hereditaments therein mentioned, and comprising, with other hereditaments, the lands and hereditaments hereby appointed, were limited and settled to the use of the borrower for his life in possession with remainders over; and the indenture now in recital contained a power for the trustees, or other the trustees or trustee for the time being thereof, to sell the said hereditaments and premises thereby settled as therein mentioned (*c*); AND WHEREAS, the trustees are the present trustees of the said indenture of settlement; AND WHEREAS, the borrower has, under the power in that behalf given to him by the Settled Land Act, 1882, agreed with [*lord*] the lord of the manor of ——, in the county of ——, for the enfranchisement (*d*) of certain copyhold lands and hereditaments holden of the said manor, being part of the hereditaments and premises comprised in the hereinbefore recited indenture of settlement; AND WHEREAS the sum of £—— is required for the purpose of effecting such enfranchisement, and the lender has agreed to advance the sum of £—— so required upon having the repayment of the same with interest at the rate hereinafter mentioned secured

Recitals: of settlement created by deed;

as to trustees of settlement;

of agreement for enfranchisement;

of agreement for loan to raise money required for enfranchisement.

(*a*) The tenant for life must give notice to the trustees of the settlement and to their solicitor of his intention to make this charge pursuant to sect. 45 of the Settled Land Act, 1882: see *Re Ray's Settled Estates*, 25 Ch. D. 464. Notice of a general intention to make a mortgage or charge is not sufficient: see sect. 5 (1) of the Settled Land Act, 1884.

(*b*) Stamp, *ad valorem* on amount secured.

(*c*) Trustees with a power of sale are "trustees of the settlement" for the purposes of the Settled Land Acts: see sect. 2 (8) of the Act of 1882. If the settlement was made since 1882, and contains a declaration that the trustees are to be trustees of the settlement for the purposes of the Acts, say—

"and the indenture now in recital contained a declaration that the trustees or trustee for the time being thereof should be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890" (or as the case may be).

(*d*) A power to raise money where "required" for enfranchisement or for equality of exchange or partition is given by sect. 18 of the Settled Land Act, 1882. As to the meaning of "required," see *Re Clifford*,

in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

XVII. MORTGAGE BY TENANT FOR LIFE FOR ENFRANCHISEMENT.

Testatum.

1. In consideration of the sum of £—— now paid to the trustees (*e*) by the lender at the request of the borrower (the payment and receipt whereof the borrower and the trustees respectively hereby acknowledge), the borrower, in exercise of the power for this purpose given to him by the Settled Land Acts, 1882 to 1890, and of every other power enabling him in this behalf, hereby, as beneficial owner, grants and conveys unto the lender, ALL THOSE [*describe parcels* (*f*)], TO HOLD the same unto and to the use of the lender, his heirs and assigns; subject to the proviso for redemption following.

Conveyance by tenant for life under statutory powers.

2. PROVIDED ALWAYS, that if the borrower, or any person or persons for the time being interested in the premises under the hereinbefore recited indenture of settlement, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon in the meantime at the rate of —— per centum per annum, then the lender, his executors, administrators, or assigns, will at the request and cost of the borrower, or such person or persons as aforesaid, reconvey the premises to the uses, upon the trusts, and subject to the powers and provisions for the time being subsisting in relation to the same under or by virtue of the hereinbefore recited indenture of settlement.

Proviso for redemption.

3. PROVIDED ALWAYS, and it is hereby agreed, that if the said sum of £——, or any part thereof, shall not be paid on the —— day of ——, 19—, then the lender, his executors, administrators, and assigns, shall thenceforth be entitled to interest at the rate aforesaid, on the said sum of £——, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year.

Mortgagee to be entitled to interest.

Covenant by tenant for life to pay interest during his life.

[1902] 1 Ch. 87; and *Re Bruce,* [1905] 2 Ch. 372. Enfranchisement includes purchase of freehold reversion of settled leaseholds: *Re Bruce, sup.*

(*e*) The money raised is capital money, and must be paid either to the trustees (who can give a receipt: S. L. Act, 1882, s. 40) or into Court, at the option of the tenant for life: s. 22 (1). There must be two trustees (s. 39), unless one is authorised by the settlement to give receipts or the Public Trustee is sole trustee: see *Re Leslie,* [1911] 1 Ch. 611.

(*f*) In this precedent the lands mortgaged are not the same as those which are the subject of the enfranchisement.

XVII. MORTGAGE BY TENANT FOR LIFE FOR ENFRANCHISEMENT.

4. And the borrower hereby covenants with the lender that he the borrower will, during his life, keep down and pay to the lender, his executors, administrators, or assigns, the interest on the said sum of £——, or on so much thereof as shall for the time being remain unpaid at the rate aforesaid, as and when the same shall become due and payable (*ff*).

5. [*Covenant against registration*, ante, *p.* 8.]

6. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8; *the surplus moneys to be paid* "to the person or persons entitled to the said surplus moneys."]

Acknowledgment of mortgagee's right to production of title deeds and undertaking for safe custody (*g*).

7. And the borrower hereby acknowledges the right of the lender to the production of the several deeds and documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

In witness, &c.

The Schedule above referred to.

XVIII. MORTGAGE *by* Trustees *of a* Settlement *created by* Will, *on behalf of an* Infant Tenant *for* Life *of* Settled Freeholds *and* Copyholds, *under the Settled Land Act*, 1882, *ss.* 18 *and* 60, *to raise* Money *for* Equality *of* Exchange. Acknowledgment *of* Mortgagees' Right *to* Production *of* Title Deeds.

Parties.

THIS INDENTURE (*h*), made the —— day of ——, 19—, Between [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter

(*ff*) Sometimes the tenant for life covenants for payment of principal as well as interest: *ut ante*, p. 18. In that case a provision must be added limiting his liability, as follows:—

"Provided always that as between the borrower and the mortgaged hereditaments the mortgaged hereditaments shall be the primary security for the moneys hereby secured, but this provision shall not affect the lender or his assigns, or his or their right to enforce his or their securities or remedies hereunder against the said hereditaments, or the borrower personally in such order or manner as he or they may think fit."

(*g*) The deeds relating exclusively to the land mortgaged will be delivered to the mortgagee; the acknowledgment and undertaking is with respect to the deeds relating also to settled lands not comprised in the mortgage.

Stamp.

(*h*) Stamp, *ad valorem* on amount secured.

called "the trustees"), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the mortgagees"), of the other part; WHEREAS [*testator*], late of, &c., deceased, duly made and executed his will, dated, &c., and thereby gave and devised all his real estate of every description to the use of [*first tenant for life*] for his life, and from and after his decease to the use of [*infant tenant for life*] for his life, with divers remainders over; AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, without having revoked or altered his said will, and the same was, on the —— day of ——, duly proved in the Principal Probate Registry by the executors therein named: AND WHEREAS, by an order of the Chancery Division of the High Court of Justice dated the —— day of ——, 19—, and made by Mr. Justice ——, the trustees were, on the application of the said [*first tenant for life*], appointed trustees of the settlement created by the said will for the purposes of the Settled Land Acts, 1882 to 1890; AND WHEREAS the said [*first tenant for life*] died on the —— day of ——, 19—; AND WHEREAS the said [*infant tenant for life*] has not yet attained his majority, having been born on the —— day of ——, 19—; AND WHEREAS the trustees, on behalf of the said [*infant tenant for life*], recently agreed with [A. B.] for the exchange of certain closes of land and hereditaments hitherto forming part of the real estate of the said [*testator*], so devised by his said will, as is hereinbefore recited, for the several closes of land and hereditaments hereby appointed, hitherto the property of the said [A. B.]; AND WHEREAS, by an indenture bearing even date with, but intended to be executed immediately before, these presents, and made between the said [A. B.] of the one part, and the trustees, of the other part, in consideration of the conveyance as therein mentioned to the said [A. B.] of the several closes of land and hereditaments therein mentioned or referred to, being part of the real estate of the said [*testator*] so devised as aforesaid, and also in consideration of the sum of £—— paid to the said

XVIII. MORTGAGE BY TRUSTEES OF SETTLEMENT ON BEHALF OF INFANT FOR EQUALITY OF EXCHANGE.

Recitals:
of settlement created by will;
of death of testator (*i*);
of appointment of trustees of settlement by Court;
of infancy of tenant for life;
of agreement for exchange;
of conveyance of lands taken in exchange to trustees of settlement and of payment of moneys for equality of exchange;

(*i*) If the testator died after 1897, add recital of assent of executors to the devise, as follows:—

"WHEREAS [*executor*] and [*executor*], the executors named in the said will, have by writing under their hands, dated the —— day of ——, assented to the devise of his real estate made by the said [*testator*] as aforesaid."

XVIII. MORTGAGE BY TRUSTEES OF SETTLEMENT ON BEHALF OF INFANT FOR EQUALITY OF EXCHANGE.

[A. B.] by the trustees for equality of exchange, the said [A. B.] has conveyed unto the trustees the several closes of land and hereditaments hereby appointed: To HOLD the same to such of the uses, upon such of the trusts, and with and subject to such of the powers and provisions in and by the said will declared and contained, of and concerning the lands and hereditaments thereby devised, as are now subsisting; AND WHEREAS the said sum of £—— so paid for equality of exchange as aforesaid, was advanced to the trustees by the mortgagees, and upon the treaty for the said advance it was agreed that the repayment thereof with interest at the rate hereinafter mentioned should be secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

of advance by mortgagee of moneys paid for equality of exchange.

Testatum.

Conveyance by trustees under statutory power.

1. In consideration of the sum of £—— so paid as aforesaid to the trustees by the mortgagees (the receipt whereof the trustees hereby acknowledge), the trustees, on behalf of the said [*infant tenant for life*], and in exercise of the powers for this purpose given to or vested in them, as such trustees as aforesaid of the settlement created by the hereinbefore recited will of the said [*testator*], by the Settled Land Acts, 1882 to 1890, and of every other power enabling them in this behalf, hereby, as trustees, appoint (*k*) unto the mortgagees, ALL THOSE several closes of land, &c. [*describe parcels by reference to schedule*, ante, *p.* 10]; To HOLD the same premises unto and to the use of the mortgagees, their heirs and assigns; subject to the proviso for redemption following.

Proviso for redemption.

2. PROVIDED ALWAYS, that if the trustees, or any person or persons for the time being interested in the premises under the hereinbefore recited will, shall, on the —— day of ——, 19—, pay to the mortgagees, their executors, administrators, or assigns, the sum of £——, with interest thereon in the meantime at the rate of —— per centum per annum, then the mortgagees, their executors, administrators, or assigns, will at the request and cost of the trustees, or such person or persons as aforesaid, reconvey the premises to the uses, upon the trusts, and subject to the powers and provisions for the time being subsisting in relation to the same under or by virtue of the said will.

(*k*) The trustees having no estate in the land, the mortgage is made by appointment.

XVIII. MORTGAGE BY TRUSTEES OF SETTLEMENT ON BEHALF OF INFANT FOR EQUALITY OF EXCHANGE.

3. PROVIDED ALWAYS, and it is hereby agreed, that if the said sum of £——, or any part thereof, shall not be paid on the —— day of ——, 19—, then the mortgagees, their executors, administrators, and assigns, shall thenceforth be entitled to interest at the rate aforesaid, on the said sum of £——, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year. Mortgagee to be entitled to interest.

4. [*Covenant against registration, as in Precedent II.*, ante, *p.* 8, *commencing*, "The trustees for themselves and their assigns hereby covenant," &c.; *and qualifying the covenant by the addition of the following clause:* "PROVIDED ALWAYS, that the trustees, or any of them, shall not be under any personal liability in respect of any breach of this covenant except so far as relates to their own personal acts or defaults."] Covenant against registration. Qualified.

5. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8; mutatis mutandis, *the surplus moneys to be paid to* "the trustees or trustee for the time being of the settlement created by the said will as aforesaid, or other the person or persons entitled thereto."] Increment value duty and reversion duty.

6. AND the said trustees, on behalf of the said [*infant tenant for life*], hereby acknowledge the right of the mortgagees to the production of the several deeds and documents of title mentioned in the second schedule hereto, and to delivery of copies thereof. Acknowledgment of mortgagees' right to production of title deeds (*l*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Parcels.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Deeds and Documents of Title.*)

(*l*) As in this precedent it is intended that the lands taken in exchange shall be the subject of the mortgage, the conveyance of the lands taken in exchange will be handed over to the mortgagees, but the other documents relating to the title of the infant tenant for life and his successors will, generally, be retained by the trustees.

XIX. DEED, *of* SUBSTITUTED SECURITY *by a* TENANT *for* LIFE *under the Settled Land Act*, 1882, *s.* 5, CHARGING *an* INCUMBRANCE *affecting* LANDS SOLD *on other part of the* SETTLED LANDS (*m*).

XIX. DEED OF SUBSTITUTED CHARGE BY TENANT FOR LIFE.

THIS INDENTURE (*n*), made the —— day of ——, 19—,

Parties. BETWEEN [*tenant for life*], of, &c., of the one part, and [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the other part; WHEREAS, by an indenture of mortgage, dated the —— day of ——, 19—, and made between [*parties*], the hereditaments particularly described in the schedule thereunder written were conveyed and assured to the use of the mortgagee in fee simple, by way of mortgage for securing payment of the sum of £—— with interest thereon at the rate of —— per cent. per annum; AND WHEREAS, by an indenture of settlement dated the —— day of ——, 19—, and made between [*parties*], the said hereditaments comprised in the hereinbefore recited indenture of mortgage were limited, with other hereditaments (but as to the said hereditaments comprised in the said indenture of mortgage, subject thereto and to the said sum of £——, and interest for the same thereby secured) to the use of the said [*tenant for life*] for his life, with divers remainders over; AND WHEREAS the said [*tenant for life*],

Recitals: of mortgage;

of settlement;

of contract by tenant for life

Transfer of incumbrances on land sold, &c.

(*m*) See K. & E. 10th ed. vol. ii. notes to Prec. CVII., pp. 298 *et seq.* The 5th section of the Settled Land Act, 1882, enables the tenant for life, on a sale, exchange or partition, where there is an incumbrance affecting land sold or given in exchange or on partition, with the consent of the incumbrancer, to charge that incumbrance on any other part of the settled land in exoneration of the part sold or so given. "Incumbrance" in this section includes charges having priority to the settlement, but not charges created by or in exercise of a power in the settlement on which no money has been actually raised, as a conveyance by way of sale, &c. by a tenant for life effectually passes the land conveyed, free from such charges: see sect. 20 (2) of the Act. It includes a rentcharge under the Improvement of Land Acts, 1864 and 1899: *Re Strafford and Maples*, [1896] 1 Ch. 235.

Notice of the tenant for life's intention to make this charge should be given to the trustees of the settlement and to their solicitor: see *ante*, p. 44, note (*a*). See also as to substitution of securities on lands acquired by purchase or exchange, sect. 24 (4) of the Act of 1882.

(*n*) Stamp, *ad valorem*, at the rate of 6*d.* for every 100*l.* and also for every fractional part of 100*l.* of the amount secured: see Stamp Act, 1891, sched. Mortgage, &c. (2), *ante*, p. 2.

XIX. DEED OF SUBSTITUTED CHARGE BY TENANT FOR LIFE.

as such tenant for life as aforesaid, recently contracted with [*purchaser*] for the sale to him of a certain messuage or dwelling-house, and a close or parcel of land thereto adjoining, being part of the said hereditaments comprised in the said indenture of mortgage, and upon the treaty for the said sale, the mortgagee consented that such sale should be made free and discharged from his aforesaid mortgage upon having the payment of the mortgage debt and the interest thereon secured on the hereditaments and in manner hereinafter appearing; AND WHEREAS, by an indenture bearing even date with, but executed before these presents, the said messuage and premises so contracted to be sold as aforesaid have been conveyed and released unto and to the use of the said [*purchaser*], freed and discharged from the said sum of £—— and interest secured by, and all claims and demands under the hereinbefore recited indenture of mortgage; AND WHEREAS the whole of the said principal sum of £——, together with interest thereon for the current half-year, is now owing to the mortgagee on the security of the hereinbefore recited indenture of mortgage. NOW THIS INDENTURE WITNESSETH as follows:—

for sale of messuage, &c. free from incumbrance, and mortgagee's consent thereto;

of conveyance of messuage, &c. to purchaser;

of state of mortgage debt.

First *testatum*.

1. In consideration of the premises, the said [*tenant for life*], in exercise of the powers in that behalf by the Settled Land Acts, 1882 to 1890, given to him as such tenant for life in possession as aforesaid, and of every other power (if any) him hereunto enabling, hereby charges the hereditaments hereinafter described and hereby appointed (forming part of the hereditaments comprised in and now subject to the said indenture of settlement) with the payment of the said principal sum of £——, and all interest due and henceforth to become due thereon in exoneration of and substitution for the said messuage and premises so sold and conveyed by the hereinbefore recited indenture of even date herewith as aforesaid.

Charge.

2. For the consideration aforesaid, the said [*tenant for life*], in exercise of the power or powers aforesaid, hereby, as beneficial owner, grants and conveys unto the mortgagee ALL THOSE [*substituted lands*]; TO HOLD the same unto and to the use of the mortgagee, his heirs and assigns; subject to the proviso for redemption following.

Conveyance of substituted lands.

3. [*Proviso for redemption as in Precedent XVII.*, ante, *p.* 45, *substituting* "the said [*tenant for life*]" *for* "the borrower," *and* "the mortgagee" *for* "the lender."]

XIX. DEED OF SUBSTITUTED CHARGE BY TENANT FOR LIFE.

4. [*Proviso as to interest, and covenant by tenant for life to pay interest during his life,* "as from the —— day of —— last" (*the last half-yearly day of payment*), ante, *p.* 46, *substituting as above.*]

5. [*Covenant against registration,* ante, *p.* 8, *substituting as above.*]

6. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8, *substituting as above. The surplus to be paid to the* "trustees or trustee for the time being of the said indenture of settlement or other the person or persons entitled thereto."]

Acknowledgment of mortgagee's right to production of settlement, and undertaking.

7. And the said [*tenant for life*] hereby acknowledges the right of the mortgagee to the production of the hereinbefore recited indenture of settlement (of which he now retains and holds possession), and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

In witness, &c.

XX. MORTGAGE *of* Freehold Lands *under a* Term *created by a* Settlement *for* Raising Portions *for* Younger Children.

Parties (*o*).

THIS INDENTURE (*p*), made the —— day of ——, 19—, Between [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter

Parties.

(*o*) It is advisable and usual, if the tenant in tail or for life (as the case may be) of the settled lands is *sui juris* and will consent to concur in raising money under the trusts of a portions term, that he should be made a party to the mortgage deed, to covenant either for payment of the principal and interest, as in clause 1 of the text, or to keep down the interest during his life: see *infra*, p. 57, note (*a*); sometimes this obligation is imposed on him by the trustee of the term. If, however, he is a minor, or will not consent to join in the mortgage, the land will be the only security available to a mortgagee advancing money for raising portions. The concurrence of the portionists is not essential, according to the usual frame of the trusts of a portions term, and may, accordingly, often be safely dispensed with; but such concurrence is desirable if the portionists are *sui juris*.

(*p*) Stamp, *ad valorem* on amount secured.

(*q*) Inasmuch as the settlement will be retained with other documents of title by the tenant for life of the settled lands, it is better that the settlement should be recited, than that the mortgage should be expressed to be made as supplemental or as an annex to the settlement.

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called "the trustees"), of the first part; [*tenant in tail*], of, &c., of the second part; [*portionist*], of, &c., and [*portionist*], of, &c., of the third part; and [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the fourth part; WHEREAS, by an indenture of settlement, dated, &c., and made between [*parties*] (being the settlement made in consideration of the then intended marriage between the said [A. B.] and [C. D.], afterwards [C. B.], his wife), the several messuages, lands, and hereditaments described in the schedule thereto, and also in the schedule hereto, and hereby assigned, were conveyed unto the trustees, to the uses therein mentioned, until the solemnization of the said marriage, and from and after the solemnization thereof to the use of the said [A. B.] during his life, with remainder to the use that the said [C. B.], if she should survive him, should receive during the remainder of her life a yearly jointure rentcharge of £——, payable as therein mentioned, and subject to such rentcharge, to the use of the trustees for a term of 500 years, without impeachment of waste, upon the trusts thereinafter declared of the same, and subject thereto to the use of the first and other sons of the said [A. B.] and [C. B.] successively, according to seniority in tail male, with remainders over as therein is mentioned: AND it was by the indenture now in recital declared that the premises were thereinbefore limited to the trustees for the said term of 500 years, upon trust that if there should be any child or children of the said marriage (other than any son or sons who before his or their respectively attaining the age of twenty-one years should become entitled thereunder to the premises for the first estate in tail male), who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, then the trustees or trustee for the time being should after the death of the said [A. B.], raise by any of the ways and means therein mentioned, and particularly by mortgage of the premises, or any of them, for all or any part of the said term, for the portion or portions of such child or children (other than as aforesaid), such sum as therein mentioned, that is to say, if there should be but one such child, the sum of £——, and if there should be but two such children, the sum of £——, and if there should be three or more such children, the sums therein mentioned respectively, the sum so raiseable to be paid to the child or children for whose portion or portions the same should be raised at such time, and,

Recitals of settlement (*q*);

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if more than one, in such shares, and in such manner as the said [A. B.] should by deed or will appoint, and in default of such appointment to be paid unto or among the child or children for whose portion or portions the same should be raised, and, if more than one, in equal shares, being a son or sons, on his or their attaining the age or respective ages of twenty-one years, or being a daughter or daughters on her or their attaining the age or respective ages of twenty-one years, or day or respective days of marriage, which should first happen, if the same respectively should happen after the death of the said [A. B.], but if the same should respectively happen during his life, then immediately after his death; AND WHEREAS the said marriage was duly solemnized shortly after the date of the hereinbefore recited indenture of settlement (*r*); AND WHEREAS the said [A. B.] died on the —— day of ——, 19—, without having exercised the power of appointment so given to him by the hereinbefore recited indenture of settlement as aforesaid; AND WHEREAS there was issue of the said [A. B.] and [C. B.] three children and no more, that is to say, the said [*tenant in tail*], who is their first son, and the said [*portionists*], all of which children attained the age of twenty-one years during the life of the said [A. B.]; AND WHEREAS the said [*portionists*] have requested the trustees to raise and pay to them the sum of £—— so directed by the hereinbefore recited indenture of settlement to be raised for portions as aforesaid; AND

of marriage;

of death of tenant for life;

of number and ages of younger children (*s*);

of request to trustees to raise portions (*t*).

(*r*) If there has been a resettlement of the property whereby the tenant in tail's interest has been cut down to a life interest, it must of course be recited. So, also, if the entail has been cut off, and the estate converted into a fee simple subject to the subsisting charges.

(*s*) If some of the younger children have not attained their majority, a recital must be here introduced, instead of the recital in the text, stating the number of the younger children and their respective names and dates of birth.

Recitals when some only of portionists are *sui juris*.

(*t*) In the event referred to in the last preceding note the amount to be raised may be merely that of the share of one or more portionists who have attained the age of twenty-one years, in which case this recital will run as follows:

"AND WHEREAS the said [*adult portionist or portionists*] has [have] requested the trustees to raise and pay to him [them respectively] the sum of £——, being the share [shares] to which he is [they are respectively] entitled of the sum of £—— now pre-

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WHEREAS the trustees have applied to the mortgagee to lend to them the sum of £—— for the purpose of such portions, which he the mortgagee has agreed to do, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

Recital of agreement for loan.

First testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £—— to the said [*portionist*], and of the sum of £—— to the said [*other portionist*], making together the sum of £——, now paid by the mortgagee, at the request and by the direction of the trustees, and with the approbation of the said [*tenant in tail*] (the receipt and payment of which sum of £—— the said [*portionists*] and the trustees respectively hereby acknowledge),

Covenant by tenant in tail for payment of principal and interest (*u*).

sumptively raiseable for portions under or by virtue of the hereinbefore recited indenture of settlement."

And the recital here given may be continued as follows if the settlement contains a power for the trustees to raise the whole sum for portions before all are actually payable:

"And the trustees, in the exercise of the discretion as aforesaid, have determined to raise the whole of the said sum of £——, so presumptively raiseable as aforesaid, of which the sum of £—— is [several sums of £—— and £—— are] to be paid to the said [*adult portionist or portionists* respectively], and the sum of £——, the remainder thereof, is to be held and invested by the trustees in manner directed by the hereinbefore recited indenture of settlement, as the primary fund for the payment of portions or other payments which may hereafter become payable under the trusts of the said term of —— years created by the same indenture."

It will be necessary, in this case, that the material parts of the power to raise the whole amount should be recited in the recital of the settlement; the remainder of the money raised will be paid to the trustees, and they will acknowledge the receipt thereof. Whether the whole of the portions can be raised whilst some of the portionists are infants or their interests are contingent is doubtful: see *Gillibrand* v. *Goold*, 5 Sim. 149; *Leech* v. *Leech*, 2 Dr. & War. 568. As to the risk incurred by a mortgagee in taking a mortgage for portions which have become raisable whilst others are not yet payable, see *Nightingale* v. *Reynolds*, [1903] 2 Ch. 236.

(*u*) If the tenant in tail or for life is merely to covenant to keep down the interest during his life, this covenant will be omitted and the acknowledgment will be immediately followed by the words "the trustees in execution," &c., as in clause 2, and a further clause as mentioned in note (*a*), p. 57, will be added.

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the said [*tenant in tail*] hereby covenants with the mortgagee [*covenant for payment of principal and interest*, ante, *p.* 18, *substituting* "the said [*tenant in tail*]" *for* "the borrower," *and* "the mortgagee" *for* "the lender"].

Assignment.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the trustees, in execution of the trust for this purpose reposed in them by the hereinbefore recited indenture of settlement, hereby, as trustees, assign and convey, and the said [*tenant in tail*] hereby confirms unto the mortgagee, ALL, &c. [*describe parcels*]; TO HOLD the same unto the mortgagee for all the residue now unexpired of the said term of 500 years, without impeachment of waste; subject nevertheless to the said annual jointure rentcharge of £——, by the said indenture of settlement limited in favour of the said [C. B.] during her life as aforesaid, and the powers and remedies for recovering payment of the same; AND ALSO subject to the proviso for redemption following:—

Subject to jointure.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the trustees, or the said [*tenant in tail*], or any other person or persons for the time being entitled to the premises hereby assigned in remainder immediately expectant on the determination of the said term, shall, on the —— day of ——, 19—, pay to the mortgagee, his executors, administrators, or assigns, the sum of £——, with interest for the same at the rate aforesaid (*x*), then the mortgagee, his executors, administrators, or assigns, shall, at the request and cost of the trustees, or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, or of the said [*tenant in tail*], his heirs, executors, administrators, or assigns, or any such other person or persons entitled as aforesaid, re-assign the premises unto the trustees, or the survivor of them, or the executors or administrators of such survivor, their or his assigns, or as he or they shall direct.

Interest to be payable after default (*y*).

4. PROVIDED ALWAYS, that if the said sum of £—— shall not be duly paid on the said —— day of ——, 19—, the mortgagee, his executors, administrators, and assigns, shall be entitled to

(*x*) If there is not a covenant for payment of principal and interest, say, "at the rate of —— per cent. per annum."

(*y*) This proviso will be required only if there is not an absolute covenant for payment of principal and interest, in which case its insertion is advisable: see *Re Roberts*, 14 Ch. D. 49; see also *Ex parte Furber*, 17 Ch. D. 191.

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interest thereon, or on so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

Exclusion of power of sale (*z*).

5. PROVIDED ALWAYS, that no power of sale of the premises hereby assigned, or any part thereof, shall be deemed to be implied by or in, or to apply to this security under or by virtue of any statute or otherwise howsoever (*a*).

6. [*Covenant by* "the said [*tenant in tail*]" *with* "the mortgagee" *against registration, see* ante, *p.* 8.]

Costs of notice of term in case of registration of reversioner.

7. IT IS HEREBY AGREED AND DECLARED that the costs incurred by the mortgagee, or his assigns, after any person or persons shall have been registered as proprietor or proprietors of the reversion expectant on the said term of registering notice of such term pursuant to the Land Transfer Acts, 1875 to 1897, together with interest thereon after the rate aforesaid, shall be charged on the mortgaged premises.

8. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8, mutatis mutandis. *The surplus to be paid to* "the trustees upon the trusts upon which the same ought to be held by virtue of the said recited indenture of settlement."]

Trustees not to be personally liable.

9. PROVIDED that nothing herein contained shall render the trustees, or either of them personally, or their or his heirs, executors, administrators, estates, or effects, liable as for a debt in respect of any moneys intended to be hereby secured.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*z*) It is very usual, especially where the repayment of the loan is secured by the covenants of the tenant for life or in tail, for money to be lent to pay family charges without a power of sale. Generally, however, trustees with power to mortgage may give to the mortgagee a power of sale if he requires it: see *Re Chawner's Will,* L. R. 8 Eq. 569.

(*a*) If the tenant in tail or for life merely covenants to keep down the interest during his life, add here the following covenant:

Covenant by tenant in tail or for life to keep down interest during his life.

"And, in consideration of the premises, the said [*tenant in tail*] hereby covenants with the mortgagee that he the said [*tenant in tail*] will during his life pay to the mortgagee, his executors, administrators, or assigns, interest at the rate aforesaid on the said sum of £——, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year."

XXI. MORTGAGE OF LEASEHOLDS BY EXECUTORS.

XXI. MORTGAGE *of* LEASEHOLDS *by* EXECUTORS (*b*).

THIS INDENTURE (*c*), made the —— day of ——, 19—, BETWEEN [*executor*], of, &c., and [*executor*], of, &c. (hereinafter called "the executors"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the other part;

Parties.

Recitals: of lease to testator;

WHEREAS, by an indenture of lease dated the —— day of ——, and made between [*lessor*], of the one part, and [*testator*], of, &c., deceased, of the other part, the messuage and piece of land, &c. [*describe parcels from lease*], being the premises hereby assigned [*or*, demised], were demised to the said [*testator*] for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed; AND WHEREAS the said [*testator*] duly made and executed his will, dated, &c., and thereby appointed the executors and [A. B.] to be the executors thereof; AND WHEREAS the said [*testator*] duly made a codicil, dated, &c., and thereby revoked the hereinbefore recited appointment of the said [A. B.] to be one of the executors of his said will, but in all other respects the said [*testator*] confirmed his said will; AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, and his hereinbefore recited will and codicil were, on the —— day of ——, 19—, duly proved by the executors, as such executors thereof as aforesaid, in the Principal Probate Registry; AND WHEREAS the executors, having occasion for the sum of £—— for the purpose of paying thereout certain debts or liabilities of the said [*testator*], have applied to the mortgagee to lend to them such amount, which the mortgagee has agreed to do upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:

of will appointing executors; of codicil; of death of testator, and probate of will and codicil; of agreement for loan:

Testatum.

Assignment [or demise].

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid to the executors by the mortgagee

Power of executors to mortgage.

(*b*) As to the power of executors to mortgage or pledge any part of their testator's estate, see *McLeod* v. *Drummond*, 17 Ves. 154. The power extends to an administrator (*Russell* v. *Plaice*, 18 Beav. 21), including an administrator *durante minore ætate*: *In re Cope*, L. R. 16 Ch. D. 49.

Stamp.

(*c*) Stamp, *ad valorem* on amount secured.

XXI. MORTGAGE OF LEASEHOLDS BY EXECUTORS.

(the receipt whereof is hereby acknowledged), the executors, as personal representatives of the said [*testator*], deceased (*d*), hereby assign (*e*) [*or,* demise] unto the mortgagee, ALL THOSE the messuage and premises comprised in and demised by the hereinbefore recited indenture of lease; TO HOLD the same unto the mortgagee for all the residue now unexpired of the said term of —— years created by the hereinbefore recited indenture of lease [except the last —— days of the said term (*f*)], subject to the proviso for redemption following:—

Proviso for redemption.

2. PROVIDED ALWAYS, that if the executors, or one of them, or any other person or persons interested in the premises hereby assigned [*or,* demised] under the hereinbefore recited will and codicil of the said [*testator*] shall, on the —— day of ——, 19—, pay to the mortgagee, his executors, administrators, or assigns, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, then the mortgagee, his executors, administrators, or assigns, shall, at the request and cost of the executors, or one of them, or such other person or persons as aforesaid, re-assign [*or,* surrender], or otherwise assure the premises hereby assigned [*or,* demised], unto the executors, or the survivor of them, or their or his executors, administrators, or assigns, or as they or he shall direct.

Declaration of trust of nominal reversion.

3. The executors hereby declare that they or the survivor of them, or their or his executors, administrators, or assigns, will henceforth stand possessed of the reversion hereby excepted out of the said term in trust for the mortgagee, his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall from time to time direct, subject to such right of redemption as may for the time being be subsisting by virtue of this mortgage (*g*).

4. [*Proviso that on default in payment on the day appointed the mortgagee shall be entitled to interest,* ante, *p.* 56] (*h*).

5. [*Covenant by* "the executors" *against registration, Prece-*

(*d*) As to the statutory covenants implied by conveying "as personal representatives," see Conveyancing Act, 1881, s. 7, sub-s. 1 (F).

Implied covenants.

(*e*) Executors will generally prefer to mortgage leaseholds by assignment.

(*f*) This exception will be omitted if the mortgage be by assignment.

(*g*) This declaration of trust will be omitted if the mortgage is by assignment.

(*h*) See as to this proviso, *ante,* p. 56, note (*y*).

XXI. MORTGAGE OF LEASEHOLDS BY EXECUTORS.

dent II., ante, *p.* 8, *qualified by restricting the personal liability, as in Precedent XVIII.*, *p.* 49, mutatis mutandis *in each case.*]

6. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8, mutatis mutandis. *Surplus to be paid to* "the person or persons entitled thereto."]

Executors not to be personally liable.

7. PROVIDED ALWAYS, that nothing herein contained shall render the executors, or either of them personally, or their or his heirs, executors, or administrators, estates or effects, liable as for a debt by virtue or in respect of these presents or of any principal moneys or interest hereby secured.

IN WITNESS, &c.

XXII. MORTGAGE *of* FREEHOLDS *by* TENANT *for* LIFE *and* TENANT *in* TAIL *in* REMAINDER [*supplemental to the settlement*].

Parties.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c., and [*tenant in tail*], of, &c. (hereinafter called "the borrowers"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; AND supplemental (*k*) to an indenture of settlement (hereinafter referred to as the principal indenture), dated, &c., and made between [*parties*] (being the settlement made in consideration of the then intended marriage, which was shortly afterwards solemnized between the said [*tenant for life*] and [*wife*], his wife);

Recitals: of title of tenant in tail; of agreement for loan.

AND WHEREAS the said [*tenant in tail*] is the eldest son of the said marriage, and was born on the —— day of ——; AND WHEREAS the lender has agreed to lend to the borrowers the sum of £——, upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing.

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

Stamp.

(*i*) Stamp, *ad valorem* on amount secured.

Form of deed.

(*k*) As the settlement, with other documents of title to the mortgaged lands, will presumably be handed over to the mortgagee on completion, there seems to be no objection to the mortgage being effected by a supplemental deed. If not made either by indorsement or as a supplemental deed, then it should recite the settlement, so far as is necessary to show the limitations down to and including the estate tail, "with remainders over." Obvious verbal alterations will, in this case, be necessary throughout the deed.

Enrolment.

This deed will require to be enrolled as a disentailing assurance.

XXII. MORTGAGE OF FREEHOLDS BY TENANT FOR LIFE AND TENANT IN TAIL.

1. In pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the borrowers (the receipt whereof the borrowers respectively hereby acknowledge), they the borrowers hereby, jointly and severally, covenant with the lender that they the borrowers, or their respective heirs, executors, administrators, or assigns, or some or one of them, will pay to the lender, his executors, administrators, or assigns, on the —— day of ——, 19—, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long after that day as any principal money shall remain due under this mortgage, will pay to the lender, his executors, administrators, or assigns, interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Joint and several covenant for payment of principal and interest.

2. In further pursuance of the said agreement, and for the consideration aforesaid, each of the borrowers according to his estate and interest, and as to the said [*tenant in tail*] with the consent, hereby testified, of the said [*tenant for life*], as protector of the settlement created by the principal indenture, doth hereby, as beneficial owner, grant unto the lender, ALL THOSE manors, capital and other messuages, lands, tenements, and hereditaments, situate, &c., and particularly described in the schedule hereto, and delineated in the map hereunto annexed; TO HOLD the same premises unto and to the use of the lender, his heirs and assigns; subject nevertheless as to the estate and interest of the said [*tenant in tail*] in the same premises, to the uses, trusts, and powers limited and contained by and in the principal indenture, which are prior to the estate tail thereby limited to the use of the said [*tenant in tail*], so far as the same uses, trusts, or powers are now subsisting, or capable of taking effect, but freed and discharged from all estates in tail of the said [*tenant in tail*] at law or in equity, and all estates, interests, and powers to take effect after the determination, or in defeasance of such estate tail; AND subject as to all the estates, interests, and premises hereby granted, to the proviso for redemption following:—

Subject to estates and interests prior to the estate tail.

3. PROVIDED ALWAYS, that if the borrowers, or their respective heirs, executors, administrators, or assigns, or some or one of them, shall, on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the

Proviso for redemption.

XXII. MORTGAGE OF FREEHOLDS BY TENANT FOR LIFE AND TENANT IN TAIL.

borrowers respectively, or of their respective heirs or assigns, convey the said hereditaments and premises (*l*), if the borrowers shall both be then living, then to such uses as they shall jointly direct, and in default of and subject to such direction to the use of the said [*tenant for life*], for his life, without impeachment of waste, with remainder to the use of the said [*tenant in tail*], his heirs and assigns, or if the said [*tenant for life*] shall be then dead, then to the use of the said [*tenant in tail*], his heirs and assigns, or as he or they shall direct, but subject in either event to all such estates, interests, and powers, prior to the estate and interest of the said [*tenant in tail*], under or by virtue of the principal indenture, as shall be then subsisting and capable of taking effect.

4. And the borrowers hereby jointly and severally covenant, &c. [*continue covenant against registration, as in Precedent II.*, ante, *p.* 8].

5. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8. *Surplus to be paid to* "the person or persons entitled thereto."]

In witness, &c.

The Schedule above referred to.

XXIII. MORTGAGE *by the* Committee *of a* Lunatic Tenant *in* Tail *of* Freeholds *by* Demise *without* Power *of* Sale (*m*).

Parties.

THIS INDENTURE (*n*), made the —— day of ——, 19--, Between [*lunatic*], a person of unsound mind so found by inquisition (*nn*), by [*committee*], of, &c., the committee of the

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Proviso for redemption so as to resettle the mortgaged property.

(*l*) If it is intended that the equity of redemption shall be resettled, the proviso for reconveyance from this point is sometimes made to run as follows:—

"To the uses, upon the trusts, and with and subject to the powers and provisions contained in the principal indenture, or such of the same uses, trusts, powers, and provisions as would then be subsisting, or capable of taking effect if these presents had never been made and executed."

But it seems more prudent to make the resettlement by a separate deed.

(*m*) See *Re Pares*, 2 Ch. D. 61. The deed will require enrolment.

Stamp.

(*n*) Stamp, *ad valorem* on amount secured.

Lunatic not so found.

(*nn*) Where the lunatic is not so found, say,

"a person of unsound mind not so found by inquisition, by [A.],

XXIII. MORTGAGE BY COMMITTEE OF LUNATIC TENANT IN TAIL.

estate of the said lunatic (hereinafter called "the committee"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the other part; WHEREAS, by an indenture of settlement dated the —— day of ——, and made between [*parties*], the hereditaments hereinafter described and hereby demised, with other hereditaments, now stand limited to the uses and upon the trusts therein mentioned, under which the said [*lunatic*] is now tenant in tail in possession thereof, free from incumbrances; AND WHEREAS by an Order in Lunacy, made on the —— day of ——, 19—, in the matter of "[*lunatic*], a lunatic," it was ordered that the committee should be the committee of the person and estate of the said [*lunatic*]; AND WHEREAS by an Order in Lunacy dated the —— day of ——, made in the matter of the said [*lunatic*], it was ordered that the sum of £—— should be raised by mortgage by demise for a term of —— years of the premises hereby demised, but without any power of sale, and that the equity of redemption should be reserved in manner hereafter appearing, and that it should be referred to the masters in lunacy to settle and approve of such mortgage, and that the committee as such committee as aforesaid should, in the name and on behalf of the said [*lunatic*], execute and do such conveyance and things necessary for carrying the same into effect as the said masters should approve; AND WHEREAS the mortgagee has agreed to lend to the committee, as such committee (*p*) of the said [*lunatic*] as aforesaid, the sum of £—— upon the security of these presents; AND WHEREAS [C. D.], one of the masters in lunacy, has settled and approved of these presents as a proper mortgage of the premises, pursuant to the said order of the —— day of ——, and in testimony of such approval the seal of the said masters has been affixed in the margin hereof; AND WHEREAS the mortgagee, on the —— day of ——, duly paid the said sum of £—— into Court to the credit of the said lunacy, to an account entitled, &c. NOW THIS INDENTURE WIT-

Recitals: of settlement under which lunatic is tenant in tail in possession of settled lands; of order appointing committee (*o*); of order for raising money by mortgage;

of agreement for loan;

of master's approval of mortgage;

of payment of money advanced into Court.

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of, &c., the person appointed to exercise the powers of a committee of his estate (hereinafter called 'the committee')."

As to the appointment by a judge or Master in Lunacy of a person so to act, see Lunacy Act, 1908, s. 1; and see also Lunacy Act, 1911, s. 1.

(*o*) Where the lunatic is not so found, this recital will require some variation.

XXIII. MORTGAGE BY COMMITTEE OF LUNATIC TENANT IN TAIL.

NESSETH that, in pursuance of the said order, and in consideration of £—— so paid into Court as aforesaid, the payment whereof in manner aforesaid the committee hereby acknowledges, the said [*lunatic*], acting by the committee, as such his committee as aforesaid (*p*), hereby, as beneficial owner, demises (*oo*), and the committee, as such committee as aforesaid (*p*), hereby confirms unto mortgagee ALL, &c. [*describe parcels*]; TO HOLD the same unto the mortgagee henceforth for the term of —— years freed and discharged, for the purpose of giving effect to this security, but not further or otherwise, from the estate tail of the said [*lunatic*] therein, and all estates in reversion, remainder, or otherwise, to take effect after determination or in defeasance of such estate tail, but subject to the proviso for redemption following, that is to say, that if the committee, or any person or persons entitled to the premises hereby demised, shall, on the —— day of ——, 19—, pay to the mortgagee, his executors, administrators, or assigns, the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, then the mortgagee, his executors, administrators, or assigns, shall surrender or otherwise assure the same premises unto the person or persons who for the time being would have been entitled to the same under the hereinbefore recited indenture of settlement if these presents had never been made or executed. [*Proviso that after default in payment the mortgagee shall be entitled to interest*, ante, *p.* 56.] PROVIDED ALSO, and it is hereby declared, that [so long as the interest payable in respect of the said sum of £——, or on so much thereof as shall for the time being remain unpaid, shall be paid on the days on which the same shall become payable, or within thirty days after the same shall become payable, and the said [*lunatic*] shall live] no power of sale of the premises hereby demised, or any part thereof, shall be exerciseable in respect of, or applied to this security under or by virtue of any statute, or otherwise howsoever. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8. *Surplus to be paid to* "the said [*lunatic*] or his assigns."]

Testatum.

Demise of lands for —— years.

Proviso for redemption.

Interest to be payable after default.

Exclusion of power of sale so long as interest is paid.

IN WITNESS, &c.

(*oo*) As to the lunatic covenanting for title, see *Re Ray*, [1896] 1 Ch. 468. As to his covenanting for payment, see *ibid.*, and *Re Fox*, L. R. 33 Ch. D. 37.

(*p*) In the case of a lunatic not so found, say, "the person so appointed as aforesaid."

XXIV. MORTGAGE *by* HUSBAND *and* WIFE MARRIED *before the 1st of* JANUARY, 1883, *of* FREEHOLDS *belonging to the* WIFE, *and not being her* SEPARATE PROPERTY (*p*).

XXIV. MORTGAGE BY HUSBAND AND WIFE OF FREEHOLDS.

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [*husband*], of, &c., and [*wife*], his wife (hereinafter called "the borrowers"), of the one part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS the said [*husband*] and [*wife*], in right of the said [*wife*], are seised or possessed of the hereditaments hereby assured in fee simple in possession, free from incumbrances; AND WHEREAS the lender has agreed to lend to the borrowers the sum of £——, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recital of seisin; of wife's title; of agreement for loan (*r*).

Testatum.

1. In consideration of the sum of £—— now paid to the borrowers by the lender (the receipt whereof the borrowers hereby acknowledge), the borrowers hereby jointly and severally covenant with the lender that they the borrowers, or their respective heirs, executors, or administrators, or some or one of them, will pay to the lender, his executors, administrators, or assigns, on the —— day of —— next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, and also as long after that day as any principal money shall remain due under this mortgage, will pay to the lender, his executors, administrators,

Joint and several covenants by husband and wife for payment of principal and interest.

(*p*) This deed will require acknowledgment by the wife. In a mortgage by a husband of his wife's leaseholds, where the property was acquired by her and the marriage took place before the 1st of January, 1883, her concurrence will not be required. The deed should contain recitals of the lease or its assignment to the wife, and of the marriage, and that no settlement affects the premises; the remainder of the mortgage may be in the form of an ordinary mortgage of leaseholds by the husband alone: see *ante*, Precedents IX. and X., pp. 24, 27. As to mortgages by married women of their separate property, see *ante*, p. 5, note (*c*).

Mortgage of wife's leaseholds.

(*q*) Stamp, *ad valorem* on amount secured; but see note (*rr*) below.

Stamp.

(*r*) It might be desired that the loan should be treated as made to the husband at the wife's request and not to the two jointly, in which case it should be so recited, and the consideration would be expressed to be "paid to the said [*husband*] at the request of the said [*wife*], the receipt and payment whereof in manner aforesaid the said [*husband*] and [*wife*] hereby respectively acknowledge." It would not in that case be convenient to refer to the husband and wife as "the borrowers," and "the said [*husband*] and [*wife*]" would have to be substituted for that expression.

XXIV. MORTGAGE BY HUSBAND AND WIFE OF FREEHOLDS.

or assigns, interest thereon at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

Second *testatum*.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the said [*wife*], as beneficial owner, with the concurrence of the said [*husband*], hereby grants, and the said [*husband*], as beneficial owner, hereby grants and confirms unto the lender, ALL, &c. [*describe parcels*], TO HOLD all the premises unto and to the use of the lender, his heirs and assigns, subject to the following proviso for redemption.

Grant of freeholds.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrowers, or their respective heirs, executors, administrators, or assigns, or some or one of them, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the cost of the person or persons requiring the same, reconvey the premises hereby granted unto the said [*wife*], her heirs and assigns, or as she or they shall direct (*rr*).

4. AND the borrowers hereby jointly and severally covenant, &c. [*continue covenant against registration, Prec. II.*, ante, *p.* 8].

5. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8.]

Proviso as to primary liability.

6. PROVIDED ALWAYS, that, as between the said [*husband*], of the one part, and the said [*wife*], and the premises hereby granted, of the other part, the said [*husband*] shall be primarily liable for the principal moneys and interest intended to be hereby secured: but it is hereby expressly declared, that the proviso hereinbefore contained with respect to the primary liability of the said [*husband*] shall not affect the lender, his executors, administrators, or assigns, or his or their right to have recourse to, and enforce all or any securities, or remedies for the recovery of the said principal moneys and interest hereby secured, in such order and manner as he or they shall think fit.

IN WITNESS, &c.

(*rr*) If the equity of redemption were reserved to the husband the stamp would have to be adjudicated, since in that case the deed might be liable to an *ad valorem* stamp, as a voluntary conveyance, under sect. 74 of the Finance (1909-10) Act, 1910, notwithstanding sect. 87 (6) of the Stamp Act, 1891.

XXV. MORTGAGE (*s*) *of* FREEHOLDS *where the* MONEY *is* ADVANCED *by* TWO SEPARATE SETS *of* MORTGAGEES *in* EQUAL SHARES—ONE SET *of* MORTGAGEES *being* TRUSTEES ADVANCING *the* MONEY *on a* JOINT ACCOUNT.

XXV. CONTRIBUTORY MORTGAGE OF LAND.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the mortgagor"), of the first part; [*mortgagee*], of, &c., of the second part; and [*trustee-mortgagee*], of, &c., and [*trustee-mortgagee*], of, &c., of the third part, WITNESSETH as follows:— Parties. *Testatum.*

1. In consideration of the sum of 5,000*l.*, now paid to the mortgagor by the said [*mortgagee*] (the receipt of which sum of 5,000*l.* the mortgagor hereby acknowledges), the mortgagor Covenant for payment of principal and interest to first set of mortgagees.

(*s*) Where several persons contribute to advance money on the same estate, intending that none of them shall acquire any relative priority, the two most usual modes of effecting this object are either to limit to each an aliquot share of the estate, proportioned to his share of the money (as in the text), or for a mortgage of the entire estate to be made to both or all the lenders as joint tenants, or to a trustee or trustees for them (such trustees being either some of the persons advancing the money, or, which is preferable, strangers), with a declaration (as in the next precedent) that the mortgage-money is advanced by the several persons in question, in certain proportions. In the first case, the deed operates as so many distinct mortgages, so as to enable each mortgagee to sell his share of the mortgaged premises or to foreclose in respect of his share. In the latter case, if the mortgage is made to the several persons entitled to proportions of the money in their own names, all the persons entitled to the money must concur in a sale or foreclosure: see *Palmer* v. *Earl of Carlisle*, 1 Sim. & S. 423. But if some of the contributors are unwilling to join as plaintiffs in foreclosure proceedings, they may be made defendants: see *Luke* v. *South Kensington Hotel Co.*, L. R. 11 Ch. D. 121. If, however, the mortgage is made to a trustee or trustees for the lenders in the ordinary way, the trust for the lenders will not be disclosed, and accordingly the statutory powers of mortgagees as regards sale, &c. will be vested in such trustees. It is a breach of trust for trustees to lend on a contributory mortgage unless empowered so to do: *Webb* v. *Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328. Modes of proceeding where money is advanced by several.

In the above precedent the two sets of mortgagees advance the money and the property is conveyed to them in equal shares; it may easily be adapted to the case of two or more sets advancing money in unequal shares.

(*t*) Stamp, *ad valorem* on each amount secured. Stamp.

XXV. CONTRIBUTORY MORTGAGE OF LAND.

hereby covenants with the said [*mortgagee*], &c. [*covenant for payment of principal sum of* 5,000*l.* *and interest*, ante, *p.* 18].

Second *testatum*.

2. In consideration of the further sum of 5,000*l.*, now paid to the mortgagor by the said [*trustee-mortgagees*] out of moneys belonging to them on a joint account [*receipt and covenant as to the other* 5,000*l.* *and interest*, ante, *p.* 10].

Covenant for payment of principal and interest to second set of mortgagees.

Third *testatum*.

Conveyance of lands.

Habendum.

3. In consideration of the premises, the mortgagor, as beneficial owner, grants unto the said [*mortgagee*], [*trustee-mortgagee*], and [*other trustee-mortgagee*], ALL THOSE [*describe parcels*], TO HOLD the same as to one moiety unto and to the use of the said [*mortgagee*], his heirs and assigns, and as to the other moiety thereof, unto and to the use of the said [*trustee-mortgagees*], their heirs and assigns, but subject, as to both of the said moieties, to the following proviso for redemption thereof.

Proviso for redemption.

4. PROVIDED ALWAYS, that if the mortgagor, his heirs, executors, or administrators, shall, on the —— day of ——, 19—, pay to the said [*mortgagee*], his executors, administrators, or assigns, the sum of 5,000*l.*, and interest thereon at the rate aforesaid, and also pay to the said [*trustee-mortgagees*], their executors, administrators, or assigns, the further sum of 5,000*l.*, with interest thereon at the rate aforesaid, then the entirety of the premises hereby granted shall, at the request and cost of the mortgagor, his heirs, executors, administrators, or assigns, be duly reconveyed to the mortgagor, his heirs or assigns, or as he or they shall direct.

Covenant against registration.

5. The borrower, for himself and his assigns, hereby covenants with the said [*mortgagee*], and as a separate covenant with the said [*trustee-mortgagees*], that during the continuance of this security no person or persons or corporation shall be registered under the Land Transfer Acts, 1875 and 1897, as proprietor or proprietors of the hereditaments hereby mortgaged without the consent in writing as well of the said [*mortgagee*], his executors, administrators, or assigns, as also of the said [*trustee-mortgagees*], or the survivor of them, or the executors or administrators of such survivor, their or his assigns, and that the costs incurred by the said [*mortgagee*], his executors, administrators, or assigns, or by the said [*trustee-mortgagees*], or the survivor of them, or the executors or administrators of such survivor, their or his assigns, in lodging from time to time a caution against such registration, and in registering the said [*mortgagee*] and [*trustee-mortgagees*], or some or one of them, or the executors, administrators, or assigns of

them, or some or one of them, as proprietors or proprietor of the said hereditaments after the power of sale shall have become exerciseable, shall be deemed to be costs properly incurred hereunder. XXV. CONTRIBUTORY MORTGAGE OF LAND.

6. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8, *substituting* "the said [*mortgagee*] and [*trustee-mortgagees*] respectively, or their respective assigns," *for* "the lenders or their assigns."]

[*Insert here any special covenants and provisions*—e.g., *declaration as to leasing power* (*u*), ante, *p.* 9, mutatis mutandis.]

In witness, &c.

XXVI. DECLARATION *of* Trust *of* Money Advanced *by* Several *sets of* Lenders, *on the* Security *of a* Mortgage *to* Trustees (*x*).

THIS INDENTURE (*y*), made the —— day of ——, 19—, Between [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the first part; [A. B.], of, &c., of the second part; [C. D.], of, &c., and [E. F.], of, &c., of the third part; [G. H.], of, &c., and [J. K.], of, &c., of the fourth part; and [L. M.], the wife of [N. M.], of, &c., of the fifth part; Whereas by an indenture bearing even date with but executed before these presents, and made between [*mortgagor*], of the one part, and the trustees, of the other part, in consideration of the sum of 10,000*l.* paid to the said [*mortgagor*] by the trustees out of money expressed to be belonging to them on a joint account, the said [*mortgagor*] conveyed certain messuages and hereditaments situate in the parish of ——, in the county of ——, therein particularly described, unto and to the use of the trustees, their heirs and assigns, subject to a proviso for redemption thereof on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the trustees, their executors, administrators, or assigns, of the sum of 10,000*l.*, with interest thereon in the meantime at the rate of —— per cent. per annum on the —— day of ——, 19—; And whereas the said sum of 10,000*l.* in the

Parties.

Recitals: of mortgage;

(*u*) If the mortgagor's statutory powers of leasing are excluded, the concurrence of all the mortgagees will be necessary to the validity of the leases of the premises, which may cause inconvenience.

(*x*) See *ante*, p. 67, note (*s*). The mortgage will be in the form of Precedent III., *ante*, p. 9.

(*y*) Stamp, 10*s*. Stamp.

XXVI. DECLARATION OF TRUST OF SEPARATE SUMS ADVANCED.

hereinbefore recited indenture expressed to have been advanced by the trustees out of moneys belonging to them on a joint account was in fact contributed by the several persons, and in the proportions or sums following, that is to say, the sum of 4,000*l.*, part thereof, by the said [A. B.], the sum of 3,000*l.*, further part thereof, by the said [C. D.] and [E. F.] out of moneys belonging to them as the trustees of an indenture of settlement, dated the —— day of ——, 19—, and made between [*parties*], being the settlement made in consideration of the marriage of [*husband*] and [*wife*] (*z*), the sum of 2,000*l.* by the said [G. H.] and [J. K.], the executors and trustees named in the will dated, &c., and proved, &c., of [*testator*], of, &c., deceased, and the sum of 1,000*l.*, the residue of the said sum of 10,000*l.* by the said [L. M.] out of moneys forming part of her separate estate; AND WHEREAS the trustees have accordingly, at the request of the several persons by whom the said sum of 10,000*l.* was so contributed as aforesaid, agreed to make and execute such declaration of trust as is hereinafter contained: NOW THIS INDENTURE WITNESSETH as follows:—

of contribution of moneys advanced;

of agreement for declaration of trust.

Testatum.

Declaration of trust of aggregate sum secured.

1. In pursuance of the said agreement, and in consideration of the premises, the trustees hereby declare that they and the [survivors and] survivor of them, and the executors, administrators of such survivor, and their or his assigns, shall henceforth stand possessed of and interested in the said principal sum of 10,000*l.* secured by the hereinbefore recited indenture of mortgage and the interest thereon upon the trusts following, that is to say: Upon trust out of the moneys which shall be received from them from time to time under the said mortgage in the first place to pay all their costs, charges, and expenses of and incident to the demanding, recovering, and enforcing payment of the same moneys, and of the execution of the trusts of these presents; AND subject thereto on trust rateably and *pari passu* for the several persons by whom the said sum of 10,000*l.* was contributed, or their respective executors, administrators, or assigns, according and in proportion to the several sums so contributed and advanced by them respectively as aforesaid.

Declaration of trust of mortgaged premises.

2. It is hereby further declared that the trustees, and the [survivors and] survivor of them, and the executors and adminis-

(*z*) As to trustees lending on a contributory mortgage, see *ante*, p. 67, note (*s*).

trators of such survivor (*a*), and their or his assigns, shall stand and be seised of and interested in the hereditaments comprised in the hereinbefore recited indenture of mortgage, subject to the proviso for redemption therein subsisting, and of all other securities for the payment of the said principal sum of 10,000*l.*, and interest thereon, in trust for the said several persons by whom the said principal sum of 10,000*l.* was contributed according and in proportion to the sums contributed and advanced by them respectively as aforesaid. XXVI. DECLARATION OF TRUST OF SEPARATE SUMS ADVANCED.

3. PROVIDED ALWAYS, and it is hereby further declared, that the power of sale and other powers vested by statute in mortgagees, except powers of leasing and agreeing to lease or let, shall be forthwith exercisable and put in force upon the request in writing of any of the said several persons by whom the said principal sum of 10,000*l.* was so contributed as aforesaid, or of any other person or persons for the time being entitled to the whole or a part or share of any of the several sums so contributed as aforesaid. Proviso as to exercise of powers of sale, &c.

4. PROVIDED ALWAYS, that it shall be lawful for the trustees, and the [survivors and] survivor of them, and the executors and administrators of such survivor, and their or his assigns, to exercise the powers of leasing and agreeing to lease or let vested by statute in mortgagees in possession as and when they shall in their discretion think proper. Powers of leasing to be exercised by trustees at discretion.

IN WITNESS, &c.

XXVII. MORTGAGE *of an* UNDIVIDED SHARE *of* COPYHOLDS *by* ONE *of* TWO TENANTS *in* COMMON.

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS [*testator*], late of, &c., deceased, by his will, dated, &c., and proved, &c., (among other things) gave and devised the copyhold hereditaments hereinafter described unto [*wife*], his wife, for her life, and from and after her decease unto his two sons [A., B.] and the Parties. Recitals: of will devising copyholds to wife for life with remainder to sons as tenants in common;

(*a*) Not the "*heirs* and assigns of," &c.: see sect. 30 of the Conveyancing Act, 1881.

(*b*) As to stamp, see *ante*, p. 20, note (*m*). Stamp.

XXVII. MORTGAGE OF UNDIVIDED SHARE OF COPYHOLDS.

borrower, their heirs and assigns, in equal shares as tenants in common; AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, seised of or otherwise entitled to the said copyhold hereditaments in customary fee simple, according to the custom of the manor of ——, in the county of ——, of which the same are holden, and leaving his said wife and two sons him surviving;

of death of testator;

of death of testator's wife;

AND WHEREAS the said [*wife*] died on the —— day of ——, 19—;

of agreement for loan;

AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

Testatum.

Covenant for payment of principal and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*covenant for payment of principal and interest*, ante, *p.* 18].

Second *testatum.*

Covenant for conditional surrender of share of copyholds.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, hereby covenants with the lender that he the borrower, and all necessary parties, will forthwith surrender into the hands of the lord or lady of the said manor, ALL THAT the one equal moiety to which he is entitled as aforesaid under the hereinbefore recited will of the said [*testator*], of and in all and singular, &c. [*describe parcels*], to the use of the lender, his heirs and assigns, according to the custom of the said manor, and by and under the rents, fines, suits, and services therefor due and of right accustomed, but subject to a proviso for avoiding such surrender on payment by the borrower, his executors, administrators, or assigns, to the lender, his executors, administrators, or assigns, on the —— day of ——, 19—, of the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum [*covenant to pay fines, &c.*, "in respect of the said share," *ante*, p. 21; *and any other provisoes and covenants as to reduction of interest, mode of repayment of principal, leasing powers, &c. which may be desired*].

Covenants to pay fines, &c.

Power to mortgagee to exercise powers of sale, &c., either as to share or entirety.

3. PROVIDED ALWAYS, and it is hereby agreed that the statutory powers of sale, leasing, and appointing receivers may be exercised by the lender, his executors, administrators, or assigns, either in relation to the said moiety hereby covenanted to be surrendered alone, or, if he or they shall so think fit, in relation to the entirety

of the premises hereinbefore described, with the concurrence of the other person or persons for the time being seised, or possessed of, or interested in the other moiety of the same premises, or any undivided part or share thereof.

Proviso empowering mortgagee to concur in enfranchisement (*c*) or partition.

4. PROVIDED ALSO that it shall be lawful for the lender, his executors, administrators, or assigns, at any time after his or their statutory power of sale shall have become exercisable, if he or they shall so think fit, to concur with the other person or persons for the time being seised, or possessed of, or interested in the other moiety of the premises hereinbefore described, or any undivided part or share thereof, in obtaining or procuring the enfranchisement of the same premises, or any part thereof, or in making partition thereof, amongst the several persons entitled thereto, or interested therein, and to take and institute any proceedings, and to make and execute all deeds, instruments, or conveyances for the purpose of effecting or carrying out such enfranchisement or partition, and to pay any sum or sums of money for enfranchisement, or for equality of partition; and all and every such sum or sums of money, as well as all costs and charges which shall be expended or incurred in or about any such sale, lease, agreement, appointment, enfranchisement, or partition as aforesaid, shall from the time when the same shall respectively be expended and paid, be added to the principal moneys hereby secured, and shall, with interest thereon at the rate, and payable at the times and in manner aforesaid, be a charge upon the said moiety hereby covenanted to be surrendered: AND from and after every such partition, the hereditaments which shall be allotted and conveyed in severalty to the lender, his heirs or assigns, shall be subject in all respects to this security and the powers and provisions hereinbefore contained.

Costs of partition or enfranchisement to be added to debt (*d*).

5. [*Provision as to increment value and reversion duties on sale* "of the hereditaments, an undivided share of which is hereby covenanted to be surrendered, or of such undivided share or any part thereof," *ante*, *p.* 8.]

IN WITNESS, &c.

(*c*) As to the effect of enfranchisement of copyholds by mortgagees, see the Copyholds Act, 1894 (57 & 58 Vict. c. 46), s. 21 (1) (e).

(*d*) By sect. 39 of the Copyhold Act, 1894: Any compensation or consideration money or expenses paid by a mortgagee under the Act in respect of an enfranchisement of redemption of a rentcharge on the mortgaged property shall be added to his mortgage.

XXVIII. CONVEYANCE OF FREEHOLDS TO PERSON ADVANCING PURCHASE-MONEY.

XXVIII. CONVEYANCE *of* FREEHOLDS *by* DIRECTION *of a* PURCHASER *to a* MORTGAGEE *advancing* PART *of the* PURCHASE-MONEY.

Parties.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the second part; and [*mortgagee*] of, &c. (hereinafter called "the mortgagee"), of the third part; WHEREAS the purchaser lately agreed to purchase from the vendor the hereditaments hereinafter described in fee simple, free from incumbrances, at the price of 2,000*l.*; AND WHEREAS the purchaser has applied to the mortgagee for the loan of the sum of 1,000*l.* to enable him to complete the said purchase, which sum he the mortgagee has agreed to advance upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of contract for purchase; of agreement for loan.

Testatum.

Covenant by purchaser for payment of principal and interest.

1. In pursuance of the said agreement in this behalf, and in consideration of the sum of 1,000*l.* now paid to the vendor by the mortgagee, at the request and by the direction of the purchaser (the receipt and payment whereof the vendor and purchaser hereby respectively acknowledge), the purchaser hereby covenants with the mortgagee, &c. [*covenant to pay principal and interest*, ante, *p.* 18].

Second *testatum.*

Conveyance of lands by vendor to mortgagee.

2. In further pursuance of the said agreement in this behalf, and for the consideration aforesaid, and also in consideration of the further sum of 1,000*l.* now paid to the vendor by the purchaser (the receipt of which sum of 1,000*l.*, making together with the said sum of 1,000*l.* so paid by the mortgagee as aforesaid the aggregate sum of 2,000*l.*, the vendor hereby acknowledges), the vendor, at the request and by the direction of the purchaser, hereby, as beneficial owner, grants unto the mortgagee ALL, &c.

Habendum.

Stamp.

(*e*) Stamp, *ad valorem*, as a conveyance by way of sale, on the total amount of the purchase-money (see Vol. I., Conveyances, Preliminary Note, p. 307), and also as a mortgage on the amount advanced by the mortgagee.

This transaction may, if preferred, be effected by means of two deeds, viz.: (1) a conveyance by way of sale by the vendor to the purchaser, and (2) a mortgage in the ordinary form by the purchaser to the mortgagee. The stamp duty will be the same in either case.

[*describe parcels*], To HOLD the premises unto and to the use of the mortgagee, his heirs and assigns: subject to the proviso for redemption following:— XXVIII. CONVEYANCE OF FREEHOLDS TO PERSON ADVANCING PURCHASE-MONEY.

3. PROVIDED ALWAYS, that if the purchaser, his heirs, executors, administrators, or assigns, shall, on the —— day of ——, 19—, pay to the mortgagee, his executors, administrators, or assigns, the sum of 1,000*l.*, with interest for the same in the meantime at the rate of —— per cent. per annum, then the premises shall, at the request and cost of the purchaser, his heirs or assigns, be conveyed to him or them, or as he or they shall direct. Proviso for redemption.

4. [*Covenant against registration as in Precedent II.*, ante, *p.* 8, *substituting the expression* "purchaser" *for* "borrower" *and* "mortgagee" *for* "lender."]

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8, *substituting* "purchaser" *for* "borrower," *and* "mortgagee" *for* "lender."]

[*Insert here, if desired, proviso restricting mortgagor's leasing powers*, ante, *p.* 9; *or any other special covenants or provisions.*]

IN WITNESS, &c.

XXIX. MORTGAGE *of* LAND *to* SECURE *a* RETRANSFER *of* STOCK, *and* PAYMENT *in the* MEANTIME *of* SUMS EQUAL *to the* DIVIDENDS (*f*). VARIATION *for* PAYMENT *of* INTEREST *on the* VALUE *of the* STOCK.

THIS INDENTURE (*g*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower," which expression shall include his heirs, executors, administrators, and assigns, where the context so admits), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders," which expression shall include the Parties.

(*f*) Stock mortgages are not so common as formerly they were. Such a mortgage is not a proper investment of trust funds unless expressly authorised by the instrument creating the trust: *Whitney* v. *Smith*, L. R. 4 Ch. A. 513. Whether trustees may lend on a stock mortgage.

(*g*) Stamp, *ad valorem* on value of stock to be replaced: see the Stamp Act, 1891, ss. 6, 87 (1). Under sect. 17 of the Finance Act, 1911: Government stock, if registered, can be transferred by deed, and no stamp duty is required for the deed of transfer. Stamp.

XXIX. MORTGAGE TO SECURE STOCK AND DIVIDENDS.

survivor of them, and the executors and administrators of such survivor, and their or his assigns, where the context so admits), of the other part; WITNESSETH as follows:—

First *testatum.*

1. In consideration of the lenders having, at the request of the borrower, sold the sum of £—— £2½ per Cent. Consolidated Stock, and having this day paid to the borrower the sum of £——, being the net proceeds of such sale, which sum of stock and the proceeds of the sale thereof respectively belonged to them on a joint account, and of which sum of £—— the borrower hereby acknowledges the receipt, the borrower hereby covenants with the lenders that the borrower will, at his own cost, on the —— day of ——, 19—, transfer into the names of the lenders the sum of £—— £2½ per Cent. Consolidated Stock; AND will in the meantime pay to the lenders such sums of money as they would have been entitled to receive by way of dividends in respect of the said sum of £—— £2½ per Cent. Consolidated Stock so sold by them as aforesaid, if the same stock had not been sold, at such times and in such manner as such dividends would have been payable [*or*, AND will, on the said —— day of ——, pay to the lenders interest on the said sum of £—— so paid to him as aforesaid, at the rate of —— per cent. per annum from the date of these presents]; AND will also, if the said sum of £—— £2½ per Cent. Consolidated Stock, or any part thereof, shall not be transferred into the names of the lenders on or before the —— day of ——, 19—, pay to the lenders, so long as the same sum of stock or any part thereof shall remain untransferred, such sums of money as they would have been entitled to receive by way of dividends whether before or after the —— day of —— aforesaid, in respect of the said sum of £—— £2½ per Cent. Consolidated Stock if the same had not been sold, or in respect of so much thereof as shall not for the time being have been transferred, by half-yearly payments at the times and in manner appointed for payment of dividends in respect of the like stock [*or* (*if interest on the loan is to be paid, then instead of* "such sums of money," &c.), "interest at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, on the said sum of £——, or on such part thereof as shall not for the time being have been satisfied by a transfer of a proportionate part of the said sum of stock"].

Covenant to retransfer stock on fixed day;

and meanwhile to pay sums equal to dividends [*or*, interest];

and after default to pay sums equal to dividends.

Second *testatum.*

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby grants unto the lenders ALL THAT, &c. [*parcels*], To

HOLD the same unto and to the use of the lenders, their heirs and assigns, subject to the proviso for redemption following.

XXIX. MORTGAGE TO SECURE STOCK AND DIVIDENDS.

3. PROVIDED ALWAYS, that if the borrower shall, on the —— day of ——, 19—, transfer into the names of the lenders the said sum of £—— £2½ per Cent. Consolidated Stock, and shall in the meantime pay to them such sums of money as they would have been entitled to receive by way of dividends in respect of the same stock, if the same had not been sold, at the times and in manner appointed for payment of dividends in respect of the like stock [*or, if interest on the loan is to be paid*, "and shall on the said —— day of —— pay to the lenders interest on the said sum of £——, at the rate aforesaid from the date of these presents"], then the lenders will, at the request and cost of the borrower, reconvey the lands hereby granted, unto the borrower, his heirs and assigns, or as he or they shall direct (*h*).

Proviso for redemption.

4. [*Covenant against registration as in Precedent III.*, ante, *p.* 13.]

5. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

[*Here insert any special provisions* (*i*).]

IN WITNESS, &c.

XXX. MORTGAGE *of* FREEHOLDS *or* COPYHOLDS *to a* BENEFIT BUILDING SOCIETY, *incorporated under the Building Societies Act*, 1874 (*k*), *to* SECURE SUBSCRIPTIONS *and* REDEMPTION MONEY, *&c.*

THIS INDENTURE (*l*), made the —— day of ——, 19—,

(*h*) This precedent may be adapted to the case of a mortgage of copyholds, leaseholds, or other property; the proviso for redemption will require, in such cases, some obvious alterations.

(*i*) By sect. 2 (vi.) of the Conveyancing Act, 1881, "mortgage" includes a charge for securing "money's worth." The statutory powers of sale, &c. given to mortgagees by that Act therefore apply to stock mortgages.

(*k*) See Amendment Acts, 1875, 1877, 1884 and 1894. If the society advancing the money is not incorporated under the Act of 1874, the mortgage must be taken in the names of trustees. An infant member of a benefit building society cannot mortgage to the society for advances: *Nottingham, &c. Society* v. *Thurstan*, [1903] A. C. 6. As to mortgages by executors, see *Thorne* v. *Thorne*, [1893] 3 Ch. 196.

As to registered land, see L. T. Act, 1897, s. 9 (3); L. T. R. 121, 122; and (as to discharge of charges) L. T. R. 167.

(*l*) Stamp, *ad valorem* on amount secured: Stamp Act, 1891, s. 87 (2). Stamp.

xxx. MORTGAGE TO BUILDING SOCIETY.

Parties (*m*).

Recitals: of mortgagor's title;

of subscription for shares;

of agreement for advance.

Testatum.

Conveyance

BETWEEN [*mortgagor*], of, &c. (hereinafter called "the mortgagor"), of the one part, and the —— Benefit Building Society (hereinafter called "the society"), incorporated under the Building Societies Act, 1874, and having its chief offices at, &c., of the other part (*n*); WHEREAS by an indenture, dated the —— day of ——, 19—, and made between [*parties*], the hereditaments hereby conveyed were assured to the use of the mortgagor, his heirs and assigns; AND WHEREAS the mortgagor is a member of the society, and is now the holder of —— shares therein of £—— respectively, and numbered —— and —— respectively; AND WHEREAS it has been agreed that the society shall, under the rules thereof, make an advance to the mortgagor of the sum of £——, in respect of each of his said shares therein, making the aggregate sum of £——, upon his executing such mortgage as is hereinafter contained, for securing to the society the payment under the said rules of the monthly subscriptions, fines, premiums, and other moneys hereinafter mentioned: NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £——, being the full amount of £—— in respect of each of the said —— shares, of which the mortgagor is the holder as aforesaid, now paid to the mortgagor out of the funds of the society (the receipt of which sum of £—— the mortgagor hereby acknowledges), the mortgagor hereby, as beneficial owner, grants unto the said society ALL, &c. [*describe parcels*]; TO HOLD

As to the effect of an indorsed receipt on payment off of the mortgage, see Building Societies Act, 1874, s. 42; *Hoskin* v. *Smith*, 13 App. Cas. 582; *Crosbie Hill* v. *Sayer*, [1908] 1 Ch. 866; Key & Elph. 10th ed. vol. ii. p. 138, note.

(*m*) See the interpretation clause at the end of the precedent. This mode of defining the parties may be convenient in the case of these mortgages, as it is usual for the solicitors of building societies, after having settled their form of mortgage, to keep printed or lithographed copies in stock for use as occasion arises.

Mortgage of copyholds; to building society.

(*n*) If the mortgaged property is copyhold, the surrender is made to trustees for the society: see sect. 28 of the Act of 1874. In that case the parties will be the mortgagor of the first part, the society of the second part,

"And [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of the said society, of the third part."

A recital of the admission of the mortgagor will be substituted for the first recital given in the text.

of freeholds subject to right of redemption (*o*).

the same unto and to the use of the society: subject nevertheless to redemption, when and so soon as all payments hereinafter mentioned, and covenanted to be made in respect of the said —— shares shall have been made, and the rules and regulations for the time being of the society in regard to such shares shall have been observed and performed according to the covenants herein contained.

Powers to society on default;

2. IT IS HEREBY AGREED AND DECLARED that, in case default shall be made in any of the said payments, or in the observance or performance of any of the said rules and regulations in regard to the said shares, or any of them, for any consecutive —— monthly meetings of the society after the date of these presents, or if the mortgagor shall become bankrupt, or have a receiving order made against him, or shall enter into any composition or arrangement with his creditors, then, and in any of such events as aforesaid, it shall be lawful for the society at any time thereafter, when, and as they in their discretion shall think fit, to exercise and do all or any of the powers and acts following, that is to say: to demand from the mortgagor the immediate payment of the full amount which, at the date of such demand, would be necessary for the redemption of this mortgage, in accordance with the rules and bye-laws of the society, or to enter into possession and receive the rents and profits of the premises hereby conveyed, or to appoint, and from time to time to remove and re-appoint, a person to collect and receive the same at such percentage for his services as the society shall think reasonable, or to demise the premises, or any part thereof, for such terms and on such con-

to demand immediate payment;

to enter;

to appoint receiver;

to demise;

Covenant to surrender copyholds.

(*o*) If the property is copyhold the conveyance will run as follows:— "The mortgagor hereby, as beneficial owner, covenants with the society, that he the mortgagor, and all other necessary parties, will forthwith, at his or their own cost, surrender ALL, &c. [*describe parcels*]: To the use of the said [*trustees*], their heirs and assigns, according to the custom of the said manor, subject to the rents, fines, suits, and services therefor due and of right accustomed; AND ALSO subject to a condition for avoiding such surrender, when and so soon as all payments," &c.

This will be followed by a charge and declaration of trust of the copyholds until surrender—

"for the trustees, their heirs and assigns":

see *ante*, p. 21.

XXX. MORTGAGE TO BUILDING SOCIETY.

ditions as the society shall deem proper or expedient, or complete any unfinished buildings upon the premises, or repair the premises when and as the society shall deem necessary or expedient, or insure any buildings upon the premises in such sums as the society shall deem expedient, or pay all [the chief or other rents and] rates and taxes and all costs, charges, expenses, and outgoings incurred or payable in respect of the premises; AND ALSO, if the society shall think proper, and either before or after the exercise or doing of any of the powers or acts aforesaid, and subject or not to any such demise as aforesaid, to take and absolutely sell and dispose of the premises, or any part thereof, with all such powers as regards mode and conduct of sale, and otherwise as are incident to the statutory power of sale vested in mortgagees, and to convey the premises when sold unto the purchaser or purchasers thereof, or as he or they may direct.

to complete buildings, repair or insure; to sell.

Application of proceeds of sale.

3. IT IS HEREBY AGREED AND DECLARED that the society shall, out of the said rents and profits and moneys arising by such sale or sales or the execution of any of the powers herein contained, in the first place, pay all [chief or other rents, and] rates and taxes, and other outgoings, payable in respect of the premises, and all costs, charges, and expenses properly incurred hereunder, or under or by virtue of the rules for the time being of the society applicable hereto, together with interest at the rate of —— per cent. per annum, as from the respective times of any such payments as aforesaid, and, in the next place, retain all subscriptions, fines, interest, premiums, and other sums of money, which shall be due or which may become payable in respect of the said shares, it being agreed that in the event of such sale all moneys intended to be hereby secured shall be considered as then due; AND then, and after discharge of all moneys intended to be hereby secured, shall pay the surplus (if any) to the mortgagor, his executors, administrators, or assigns, or as he or they shall direct.

Covenants by mortgagor: to pay monthly subscriptions, &c. (*p*);

4. The mortgagor hereby covenants with the society that he the mortgagor will from time to time duly and punctually pay to the society all the monthly subscriptions, premiums, interest, fines, and other moneys which shall become due or payable in respect of the said shares, or any of them, according to the rules, bye-laws, or regulations for the time being of the society, or other-

(*p*) The payments vary according to the rules of the particular building society advancing the money.

wise; AND ALSO will observe and perform the rules, bye-laws, and regulations for the time being of the society in respect of the said shares; AND will on demand pay to the society all and every sums or sum of money which they shall expend under or in execution of the powers hereby conferred on them with interest for the same after the rate of —— per centum per annum from the respective times of the payment thereof; AND will keep the buildings now or hereafter standing on the premises in good repair, and also insured against loss or damage by fire to the amount of three-fourths of the value [*or*, not less than £——] at least, in such names, office and manner as shall from time to time be required by the society, and deposit every policy for such insurance with the society, and produce the receipts for the payment of such insurance [and of the chief or other rents payable in respect of the premises] within seven days after the first day on which the same respectively shall become payable, or sooner on request to the proper officer, and at the office for the time being of the society; AND that if the premises shall be sold as aforesaid, and if the rents and profits (if any) received by the society and the moneys produced by the sale shall not be sufficient to answer the trusts hereinbefore declared thereof, the mortgagor will immediately pay to the society the sum necessary to make up such deficiency.

to comply with rules;

to repay sums expended under powers;

to repair and insure;

to pay any deficiency on sale.

5. PROVIDED ALWAYS, and it is hereby agreed that none of the powers of leasing or agreeing to lease conferred by the Conveyancing Act, 1881, on mortgagors in possession shall be exerciseable during the continuance of this security by the mortgagor without the written consent of the society.

Restriction on leasing powers.

6. [*Covenant against registration as in Precedent III.*, ante, *p.* 13, *substituting the expressions* "mortgagor" *and* "society" *for* "borrower" *and* "lenders" *respectively.*]

Covenant against registration.

7. [*Provision as to increment value and reversion duties on sale,* ante, *p.* 8, *substituting as above.*]

8. IT IS HEREBY AGREED that the restrictions on the right of consolidation contained in sect. 17 of the Conveyancing Act, 1881, shall not apply to this security.

9. IT IS ALSO AGREED that the said rules and bye-laws for the time being of the society shall apply to this mortgage, and be taken by reference as incorporated herein, except so far as is hereby otherwise provided.

Incorporation of rules.

XXX. MORTGAGE TO BUILDING SOCIETY.

Interpretation clause.

10. PROVIDED LASTLY, that in these presents so far as the context requires or allows the expressions "the mortgagor" and "the society" shall be taken to include the mortgagor and the society respectively, and all persons deriving title under them respectively.

IN WITNESS, &c.

XXXI. MORTGAGE *of a* POLICY *of* ASSURANCE *effected on the* LIFE *of the* MORTGAGOR (*q*). PROVISO, *that* PRINCIPAL *shall not be called in for a* SPECIFIED TIME.

Parties.

THIS INDENTURE (*r*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, WITNESSETH as follows:—

Testatum.

Covenant for payment of principal and interest.

1. In consideration of the sum of £——, now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns, on the —— day of —— next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND also so long after that day as any principal money shall remain owing under this security to pay to the lender, his executors, administrators, or assigns, interest thereon at the same rate, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Second *testatum.*

Assignment of policy.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby assigns unto the lender, ALL THAT policy of assurance on the life of the borrower, to which he the borrower is entitled in the —— Life Assurance Society, for the sum of £——, dated the —— day of ——, 19—, and numbered ——, at an annual premium of £——; AND ALSO the said sum of £——

Notice to be given of mortgages of life policies.

(*q*) Notice in writing of the mortgage must be given to the assurance office under the Policies of Assurance Act, 1867, and inquiry should be made as to whether the office has notice of any prior charge on the policy. As to notice to the office regulating priorities, see *Re Lake*, [1903] 1 K. B. 151; *Re Weniger's Policy*, [1910] 2 Ch. 291. See also *West of England Bank* v. *Batchelor*, 51 L. J. Ch. 199; *Re Wallis*, [1902] 1 K. B. 719.

Stamp.

(*r*) Stamp, *ad valorem* on the amount secured. The provisions as to keeping on foot the policy do not render any additional stamp duty necessary. The deed should be stamped at once: see Stamp Act, 1891, s. 118; 33 Sol. J. 3.

XXXI. MORTGAGE OF LIFE POLICY.

thereby assured, and all moneys to become payable under or by virtue of the said policy by way of bonus or otherwise (*s*): To HOLD all the premises unto the lender, subject to the proviso for redemption hereinafter contained.

Habendum.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the said principal sum of £——, with interest for the same at the rate aforesaid, then the lender, his executors, administrators, or assigns, shall, upon the request and at the cost of the borrower, his executors, administrators, or assigns, re-assign the premises to him or them, or as he or they shall direct.

Proviso that money shall not be called in for a specified time.

4. PROVIDED ALWAYS, that if the borrower shall pay the interest on the said sum of £—— half-yearly, or within thirty days after the same shall become due, and shall commit no breach of any of the covenants hereinafter contained, the lender, his executors, administrators, or assigns, shall not require payment of the said sum of £—— before the —— day of ——, 19—, unless the borrower shall previously depart this life, in which case all principal and other moneys hereby secured shall immediately become payable: PROVIDED ALSO that the borrower, his heirs, executors, administrators, or assigns, shall not be entitled to pay off the said sum of £——, or any part thereof, before the said —— day of ——, 19—, unless the lender shall go into possession, appoint a receiver, or take other steps to enforce this security (*t*).

Covenants by borrower that policy is valid and subsisting;

5. The borrower hereby covenants with the lender that the said policy is now valid and subsisting for the said sum of £—— (*tt*), and that all premiums thereon have been duly paid down to the

(*s*) For several policies, say,

"ALL THOSE several policies of assurance on the life and in the name of the borrower in the respective offices, for the respective sums, of the respective dates and numbers, and at the respective annual premiums mentioned and set forth in the schedule hereto, and all moneys assured by or to become payable thereunder respectively."

(*t*) The period for restricting redemption must be reasonable, and the provisoes should be mutual: see *Morgan* v. *Jeffreys*, [1910] 1 Ch. 620.

(*tt*) For several policies, say,

"each of the policies hereby assigned is now valid and subsisting for the sum mentioned in respect thereof in the said schedule."

XXXI. MORTGAGE OF LIFE POLICY.

to keep up the policy, &c.

date of these presents, and that he the borrower, his heirs, executors, or administrators, will not do or suffer anything whereby the said policy (*u*) or any other policy to be effected as hereinafter mentioned may become void or voidable, or whereby the lender may be prevented from receiving the moneys to become payable thereunder, or any part thereof, but will regularly pay the premiums payable for keeping on foot every such policy, and from time to time to deliver the receipt for the premium for the same for the current year to the lender, his executors, administrators, or assigns, within —— days after the same shall have become payable; And that if any such policy shall become voidable, the borrower will immediately, at his own cost, do all things necessary for restoring and keeping on foot the same, and if such policy shall become void, will immediately, at his own cost, effect a new policy or policies on his life in the name or names of the lender, his executors, administrators, or assigns, in an office to be approved of by him or them, for the sum of £—— at the least (*uu*); And in case he shall at any time refuse, neglect, or omit to pay, produce, restore, or effect any such premium, receipt, or policy within the times or in manner respectively aforesaid, it shall be lawful for but not obligatory upon the lender, his executors, administrators, or assigns, to pay the premium, or restore, or effect the policy to which any such default, refusal, neglect, or omission shall relate; And the borrower, his executors, administrators, or assigns, will on demand repay to the lender, his executors, administrators, or assigns, all moneys which he or they shall disburse for any of the purposes aforesaid, with interest thereon at the rate aforesaid, until payment thereof; And will do and concur in all acts to enable him and them to effect any such new or other policy as aforesaid; And every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder, shall be a security for all the moneys intended to be hereby secured, and subject to the covenants and provisions herein contained in like manner as the premises hereby assigned.

Power for lender to effect new policy on borrower's default.

Costs of new policy to be added to debt.

Power to surrender policy.

6. The sale of any policy for the time being subject to this security under the statutory power in that behalf may be made by surrender to the office granting the same or otherwise.

In witness, &c.

(*u*) For several policies, say, "any policy hereby assigned."

(*uu*) For several policies, say,
"for the sum payable under the void policy."

XXXII. MORTGAGE *of a* POLICY *of* ASSURANCE *effected in the* NAME *of the* MORTGAGEE; TWO SURETIES *covenant for* PAYMENT *of* PRINCIPAL *and* INTEREST, *and of* PREMIUMS *on the* POLICY.

XXXII. MORTGAGE OF LIFE POLICY WITH SURETIES.

THIS INDENTURE (*w*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the first part; [*surety*], of, &c., and [*surety*], of, &c. (hereinafter called "the sureties"), of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS the lender has agreed to lend to the borrower the sum of £—— on having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing, and for the purpose of securing such repayment has effected an assurance in his own name on the life of the borrower, in the —— Life Assurance Office, for the sum of £——, by a policy dated the —— day of ——, 19—, numbered ——, and under the annual premium of £——; AND WHEREAS the sureties have agreed to join in these presents as sureties for the borrower in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of agreement for loan;

of policy of assurance in name of lender;

of agreement by sureties to join.

Testatum.

1. In pursuance of the said agreements, and in consideration of the sum of £——, now paid to the borrower by the lender, with the privity of the sureties (the receipt and payment whereof the borrower and the sureties hereby respectively acknowledge), the borrower and sureties do, and as separate covenants each of them doth, hereby covenant with the lender that they the borrower and sureties, or their respective heirs, executors, or administrators, or some or one of them, will on the —— day of ——, 19—, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest in the meantime at the rate of —— per cent. per annum; AND will also, as long after that day as any principal money shall remain due under this mortgage, pay to him or them interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Joint and several covenants by borrower and sureties for payment of principal and interest.

2. IT IS HEREBY DECLARED that so long as any principal, interest, or other moneys shall remain due on the security of these

Declaration of charge.

(*w*) Stamp, *ad valorem* on amount secured: see *ante*, p. 82, note (*r*). It will not be necessary to give notice of the mortgage to the assurance office where the policy is effected in the name of the mortgagee.

XXXII. MORTGAGE OF LIFE POLICY WITH SURETIES.

presents, the said policy hereinbefore recited to have been effected, and all moneys recoverable or receivable under or by virtue of the same policy, shall stand charged with, and shall be redeemable only upon payment of the moneys for the time being so due and owing, and upon such payment shall, at the request of the borrower, his executors, administrators, or assigns, be assigned to him or them, or as he or they shall direct.

Joint and several covenants by borrower and sureties that policy is valid;

3. The borrower and sureties hereby jointly and severally covenant with the lender as follows, that is to say, that the said policy is not void nor voidable, and is free from incumbrances, and that the borrower will not do or suffer any act or thing whereby the said policy or any other policy to be effected as hereinafter mentioned

to keep policy on foot;

may become void or voidable, but that the borrower and sureties, or their respective heirs, executors, or administrators, or some or one of them, will duly and regularly pay all premiums and sums of money payable for keeping on foot the said policy, and from time to time deliver or produce the receipt for every such premium or sum to the lender, his executors, administrators, or assigns, within —— days after every such premium or sum shall have become payable: And that if the said policy hereinbefore recited to have been effected shall become voidable,

to restore policy or effect a new policy in lieu thereof if voidable or void.

the borrower and sureties, their respective heirs, executors, or administrators, or some or one of them, will immediately at their or his own cost do, or cause to be done, all things necessary for restoring and keeping on foot the same, and if the said policy shall become void, will immediately at the like cost effect a new policy or policies on the life of the borrower in the name or names of the lender, his executors, administrators, or assigns, in an office to be approved by him or them,

Power for lender to effect new policy on default of borrower.

for the sum of £—— at the least: And in case there shall at any time be any default, refusal, neglect, or omission to pay, produce, restore, or effect any premium, receipt, or policy within the times, and in manner respectively aforesaid, it shall be lawful, but not obligatory on the lender, his executors, administrators, or assigns, to pay the premium or restore or effect the policy to which any such default, refusal, neglect, or omission shall relate; And the borrower and sureties, their respective heirs, executors, or administrators, or some or one of them, will on demand pay to the lender, his executors, administrators, or assigns, all moneys which he or they shall disburse for any of the purposes aforesaid with interest thereon at the rate aforesaid until payment thereof, and will do and concur in all acts to enable him and them to revive or effect

XXXIII. MORTGAGE OF LIFE POLICY WITH SURETIES.

any such new policy as aforesaid, and every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder shall be a security for all the moneys intended to be hereby secured, and subject to the covenants and provisions herein contained in like manner as the said policy hereinbefore recited to have been effected, and the moneys to become payable under the same.

Proviso that sureties shall be liable to lender as principals.

4. PROVIDED ALWAYS, that although as between the borrower and the sureties, the sureties are only sureties for the borrower, nevertheless as between the sureties respectively and the lender, the sureties shall be taken to be principal debtors for all moneys intended to be hereby secured, so that they shall not, nor shall either of them, nor the heirs, executors, or administrators of them, or either of them, be released from their or his liability, under these presents, by reason of time being given to the lender, his heirs, executors, or administrators, or by the release of any collateral securities for the moneys intended to be hereby secured, or by any other forbearance, act, or omission of the lender, his heirs, executors, or administrators, or by any other matter or thing whereby the sureties, or either of them, or the heirs, executors, or administrators of them, or either of them, would be so released, but for this provision.

5. [*Power to surrender policy,* ante, *p.* 84, *clause* 6.]

IN WITNESS, &c.

XXXIII. MORTGAGE *of a* LIFE ESTATE *in* FREEHOLDS *and* POLICY *of* ASSURANCE (*x*).

Parties.

THIS INDENTURE (*y*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the bor-

(*x*) A mortgage of a life estate in realty was formerly taken by demise, so as to avoid any risk of the destruction of the powers given by the settlement to the tenant for life. This, however, appears to be no longer necessary: see *Re Bedingfield and Herring,* [1893] 2 Ch. 332, the principle of which is applicable to the execution of powers of the S. L. Acts (see sect. 50, sub-sect. 3, of the Act of 1882). But where the land is registered the old form of mortgage by demise should be adopted to enable the mortgagee to register notice of the mortgage as a lease under the L. T. Act, 1875, s. 50, and therefore this form has been retained in

(*y*) Stamp, *ad valorem* on amount secured. Stamp.

XXXIII. MORTGAGE OF LIFE ESTATE IN FREEHOLDS, &C.

rower"), of the one part; and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; WHEREAS, under or by virtue of an indenture of settlement, dated, &c., and made between [*parties*], the borrower is seised of and entitled to the messuages, lands, and hereditaments described in the first schedule hereto for an estate for his life in possession, without impeachment of waste, subject to certain charges and annuities specified in the second schedule hereto; AND WHEREAS the borrower is entitled to a policy of assurance on his own life for the sum of £—— granted by the —— Assurance Society, dated the —— day of ——, 19—, and numbered ——, and under the annual premium of £——; AND WHEREAS the lenders have agreed to lend to the borrower the sum of £—— upon having the payment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of title; of borrower to life estate in lands; of title to policy; of agreement for loan.

Testatum.

Covenant to pay principal and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the borrower by the lenders out of moneys belonging to them on a joint account [*covenant to pay principal and interest, see* ante, *p.* 10].

Second *testatum.*

Demise for a term, if borrower so long live.

2. For the consideration aforesaid, he the borrower, as beneficial owner, hereby bargains and sells, and demises (*z*) unto the lenders, ALL and every the messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, of or to which the borrower is seised or entitled for his life as aforesaid, which hereditaments and premises are particularly described with the several admeasurements thereof respectively (be the same more or less) in the first schedule hereto: TO HOLD the same unto the lenders for the term of 99 years from the day next before the date of these presents, if the borrower shall so long live, without impeachment of waste (*a*), subject nevertheless to the several

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the text. In ordinary cases the mortgage may be made by grant, and the variations in the notes will then be adopted. In the text, the words "bargains and sells" are inserted in the operative part in order to give to the mortgagee an actual estate in the land without entry, instead of a mere *interesse termini:* Elph. Introd. 6th ed. 193.

(*z*) Where the mortgage is by "grant," say, "hereby grants."

(*a*) Where the mortgage is by "grant," say,

"TO HOLD the same unto the lenders from the date hereof during the life of and for all other the estate and interest (if any) of the borrower in the said premises, subject," &c.

charges and annuities mentioned in the second schedule hereto written, and also subject to the proviso for redemption hereinafter contained.

Third *testatum.*

3. For the consideration aforesaid, he the borrower hereby, as beneficial owner, assigns unto the lenders ALL THAT the said policy of assurance hereinbefore described, together with the sum of £—— thereby assured, and all other moneys assured or to become payable by virtue thereof, and the full benefit thereof, TO HOLD the said policy and premises hereby assigned unto the lenders, subject to the proviso for redemption following.

Assignment of policy of life assurance (*aa*).

Proviso for redemption.

4. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall pay to the lenders, their executors, administrators, or assigns, the said sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum on the said —— day of —— next, without any deduction: then the lenders, their executors, administrators, or assigns, will at any time thereafter, upon the request and at the cost of the borrower, his heirs, executors, administrators, or assigns, surrender and reconvey (*b*) the said hereditaments and premises hereby demised to the borrower or his assigns, and re-assign the said policy of assurance and premises hereby assigned to the borrower, his executors, administrators, or assigns, or as he or they shall direct (*c*).

5. [*Covenant against registration, see Precedent II.*, ante, *p.* 8.]

Covenant by borrower to keep up policy.

6. The borrower hereby covenants with the lenders that he the borrower will not do or suffer anything whereby the said policy hereby assigned, may become void or voidable, or the lenders, their executors, administrators, or assigns, may be hindered from receiving all or any of the moneys assured or to become payable by virtue thereof; AND that if the said policy shall become void, the borrower will immediately effect a new policy or policies on his life in the —— Assurance Society, or in some other life assurance society to be approved by the lenders, their executors, ad-

(*aa*) Notice must be given to the assurance office: see *ante*, p. 82, note (*q*).

(*b*) Where the mortgage is by "grant," omit the words "surrender and," and say,

"reconvey the said hereditaments and premises hereby granted."

(*c*) Here may be inserted, if desired, a proviso for reduction of interest on punctual payment (*ante*, p. 10); or a proviso that the principal shall not be called in for a specified time (*ante*, p. 83).

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ministrators, or assigns, in the names of the lenders, their executors, administrators, or assigns, for a sum or sums not less in the whole than the sum of £——, and that every such new policy or policies, and the moneys to become payable under the same, shall be subject to the proviso for redemption hereinbefore contained, and to this present security in all respects, in like manner as the said existing policy of assurance, and the moneys to become payable by virtue thereof; AND that the borrower, his heirs, executors, or administrators, will, from time to time, pay the said annual premium of £—— and any other premiums or sums for the time being necessary for keeping on foot the said policy hereby assigned, or any policy to be effected as aforesaid on the day on which the same respectively ought to be paid, and forthwith deliver the receipt for the same to the lenders, their executors, administrators, or assigns: AND will, on demand, pay to the lenders, their executors, administrators, or assigns, all moneys which shall be expended by them in keeping up the said existing policy, or in effecting or keeping up any new policy or policies in lieu thereof, with interest thereon at the rate aforesaid, from the time or respective times of the same having been expended, and that until such moneys shall be repaid with interest all and singular the premises hereby demised, and the said existing, or any new policy or policies to be effected as aforesaid, and the moneys to become payable under the same, shall be charged with the payment thereof: AND further that he the borrower will not, without the consent in writing of the lenders, their executors, administrators, or assigns, so long as any money shall remain due on this security, execute any of the powers or authorities contained in the said indenture of settlement, or conferred by statute or otherwise, or do or concur in any other act whereby this security shall be in anywise prejudiced or affected.

Not to exercise powers without consent of lender.

Sale of policy may be made by surrender to the office.

7. IT IS HEREBY AGREED that any sale made under the statutory power in that behalf of any policy for the time being, subject to this security, may be made by surrender to the office granting the same or otherwise.

Saving of borrower's powers as tenant for life under the S. L. Acts (*d*).

8. Nothing herein contained shall affect the power of the borrower to exercise or consent to the exercise of any of the powers of leasing, sale, or exchange, or any other powers contained in

(*d*) A tenant for life cannot assign or release his powers under the Acts (see S. L. Act, 1882, s. 50 (1)), but this section is without prejudice to the rights of an assignee for value, which shall not be affected

XXXIII. MORTGAGE OF LIFE ESTATE IN FREEHOLDS, &c.

the said recited indenture of settlement, or any of the powers vested in him by the Settled Land Acts, 1882 to 1890, or any Act amending or extending the same, which powers shall be exerciseable without any further consent or concurrence by or on the part of the lenders, their executors, administrators, or assigns, and this security shall attach upon the life estate or interest of the borrower in all property which by means of any sale, exchange, or transposition of investments under any of such powers may from time to time be substituted for the said hereditaments, or any part thereof, and on the rents reserved on leases.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

XXXIV. MORTGAGE *by a* Builder *of* Property *comprised in an* Agreement *for several* Building Leases. Power *for* Mortgagor *to* Withdraw Houses *from the* Security *on* Payment *of* Instalments *of* Loan.

THIS INDENTURE (*e*), made the —— day of ——, 19—, Between [*mortgagor*], of, &c., builder (hereinafter called "the borrower," which expression shall include his heirs, executors, and administrators, where the context so admits), of the one part; and [*mortgagee*], of, &c. (hereinafter called "the lender," which expression shall include his executors, administrators, and assigns, where the context so admits), of the other part; Whereas, by an agreement, dated the —— day of ——, 19—, and made between [*lessor*], of the one part, and the borrower, of the other part, it was agreed that when and so soon as the messuages, or dwelling-houses, or buildings, thereinafter agreed to be built, should be built, finished, and made fit for habitation to the satisfaction of the architect or surveyor for the time being of the said [*lessor*], and such architect or surveyor should have certified in writing to that effect, the said [*lessor*] would, by one or several leases as therein mentioned, demise unto the borrower the piece or parcel of land, situate at ——, in the county of ——, and therein particularly described, and the said messuages, or dwelling-houses and build-

Parties.

Recitals: of agreement for building lease or leases;

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without his consent except as to leases by a tenant for life in actual possession: sub-sect. (3). This clause preserves the general powers of the tenant for life.

(*e*) Stamp, *ad valorem* on amount secured. Stamp.

XXXIV. BUILDER'S MORTGAGE OF PROPERTY COMPRISED IN AGREEMENT.

ings to be built thereon, for the several terms of —— years, to be computed from the —— day of ——, 19—, respectively, at such several yearly rents, with and subject to such exceptions, reservations, covenants, provisoes, and stipulations as are therein mentioned; AND the borrower thereby agreed with the said [*lessor*] to build and finish, fit for habitation, to the satisfaction of the said architect or surveyor, within the times and in the manner therein mentioned, —— messuages, or dwelling-houses, and buildings, with proper outbuildings, as therein mentioned [*recite shortly any special stipulations as to the mode of granting leases which may be material as affecting the security*]; AND the agreement now in recital contained a power for the said [*lessor*], his heirs and assigns, upon breach of any of the stipulations contained in the same agreement to re-enter upon the premises thereby agreed to be demised, or such part of the same whereof no such lease as aforesaid should have been actually granted, and for cesser of the same agreement as regards the whole or such part of the premises as should be so entered upon; AND WHEREAS, in pursuance of the hereinbefore recited agreement the borrower has commenced to build the said messuages and buildings on the said piece or parcel of ground so agreed to be demised as aforesaid, and has applied to the lender to lend to him the sum of £—— for the purpose of completing the said messuages or buildings, which he the lender has agreed to do upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

of commencement of buildings and agreement for loan.

Testatum.

Covenants by borrower:

to pay principal and interest;

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender [*covenant for payment of principal and interest*, ante, *p.* 18].

to complete buildings;

2. The borrower hereby further covenants with the lender that he the borrower will, within the times and in manner mentioned in the hereinbefore recited agreement, complete and finish fit for habitation in all respects the said —— messuages and buildings so agreed to be built on the piece or parcel of ground as aforesaid;

to take up leases.

AND will also, as soon as conveniently may be, at his own cost, perform and do all acts and things which may be necessary to entitle him to the lease or several leases by the hereinbefore recited agreement agreed to be granted to him: AND will immediately upon obtaining any such lease or leases execute a valid legal mort-

XXXIV. BUILDER'S MORTGAGE OF PROPERTY COMPRISED IN AGREEMENT.

gage by way of assignment, or demise, as the lender shall direct, of the premises comprised in such lease or leases, for such term or respective terms, and with and subject to all such powers, covenants, conditions, and provisoes as the lender may reasonably require.

Covenant by borrower to insure.

3. And the borrower hereby further covenants with the lender to keep all messuages, buildings, and property upon the premises during the continuance of this security insured against loss or damage by fire in the sum of £—— at the least [*or*, to the full value thereof], in the —— Insurance Office, or some other fire insurance office to be approved by the lender, and to pay all premiums or sums from time to time payable for keeping up such insurance on [*or*, within —— days after] the first day on which every such premium or sum shall become payable, and on demand to produce to him the policy or policies of such insurance, and the receipt for every premium or sum payable in respect thereof, and that on the refusal or failure of the borrower to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender at any time thereafter to effect under the statutory powers in that behalf an insurance of the said messuages and buildings to an amount not exceeding the sum of £—— [*or*, to the full value thereof].

Power for lender to complete messuages, &c. on default of borrower in proceeding with works.

4. Provided always, and it is hereby agreed that if the borrower shall at any time neglect or omit to proceed uninterruptedly with the finishing of the said messuages and buildings so agreed to be built as aforesaid, in accordance with the provisions and stipulations in that behalf in the hereinbefore recited agreement contained, and Mr. ——, of, &c., or some other competent surveyor, shall in writing certify to that effect, or if the borrower shall become bankrupt or have a receiving order made against him, or enter into any composition or arrangement for the benefit of his creditors, or if a receiver shall be appointed of the mortgaged premises, or if the mortgaged premises, or any part thereof, or any chattels thereon, shall be taken in execution, or if any chattels thereon shall be taken under a distress for rent, then, and in any such case, it shall be lawful for the lender to enter upon, proceed with, and complete the same messuages and buildings, and he shall be entitled to recover all moneys which he shall expend

XXXIV. BUILDER'S MORTGAGE OF PROPERTY COMPRISED IN AGREEMENT.

for that purpose from the borrower by any action or actions or proceedings, or to prove for the same against his estate as may be thought expedient, with interest for the same at the rate of —— per cent. per annum; AND all moneys so expended with interest shall be deemed to be covered by and included in this security.

Power for borrower to withdraw houses from the security on payment of instalments.

5. PROVIDED ALWAYS, that, subject and without prejudice to the power of sale, or any other remedy subsisting under or by virtue of these presents, it shall be lawful for the borrower from time to time, upon giving to the lender six calendar months' previous notice in writing of his intention in that behalf, to withdraw from this security any of the said leases and the premises therein respectively comprised upon payment of such sum of money not being less in amount than *three-fourths* of the value estimated at the cost price in materials and labour of the messuage or buildings comprised in such lease as the borrower shall in such notice specify; AND upon payment also of all interest, and costs, charges, and expenses (if any), for the time being due on the security of these presents; AND upon receipt of all moneys to be paid for or upon such withdrawal, the lender will, at the cost of the borrower, assign, surrender, or otherwise convey the premises to be withdrawn to such person or persons and in such manner in all respects as the borrower shall direct.

Covenant against registration.

6. The borrower, for himself and his assigns, hereby covenants with the lender that, during the continuance of this security, or of any legal mortgage to be executed as aforesaid, no person or persons or corporation shall be registered under the Land Transfer Acts, 1875 and 1897, as proprietor or proprietors of any leasehold hereditaments comprised in this security or to be comprised in any such legal mortgage as aforesaid, or any part thereof, without the consent in writing of the lender, and that the costs incurred by the lender in lodging from time to time a caution against such registration, and after any person or persons or corporation shall have been registered as proprietor or proprietors of the reversion expectant on the term of years to be granted by any lease under the hereinbefore recited agreement in registering notice of such term pursuant to the said Acts, and after the power of sale conferred by these presents, or by any such legal mortgage as aforesaid, or by the statute in that behalf, shall have become exercisable in registering the lender as proprietor under the said Acts

of the hereditaments comprised in this security, or to be comprised in any such legal mortgage as aforesaid, shall be deemed to be costs properly incurred under these presents.

7. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

8. [*Clause preserving mortgagee's right of consolidation*, ante, *p.* 9.]

In witness, &c.

The Schedule above referred to.

XXXV. MORTGAGE *of a* Leasehold Public-house *to a* Firm *of* Brewers, *to* Secure *a* Present Advance, and *the* Balance *of an* Account Current *for* Future Advances *and* Goods *to be* Supplied. Variations *where the* Mortgagees *are not* Brewers (*f*).

THIS INDENTURE (*g*), made the —— day of ——, 19—, Between [*mortgagor*], of, &c., licensed victualler (hereinafter called "the borrower"), of the one part, and [*mortgagee*] and [*mortgagee*], carrying on the business of brewers at ——, in the county of ——, under the style or firm of —— & Co. (hereinafter called "the lenders"), of the other part; Whereas by an indenture of lease, dated the —— day of ——, 19—, and made between [*parties*], the said [*lessor*] demised [*describe parcels*] unto the borrower from the —— day of ——, for the term of —— years, at the rent and subject to the lessee's covenants and conditions therein contained; And whereas the lenders have agreed to lend

Parties.

Recitals: of lease; of agreement for loan.

(*f*) This precedent can be used in the case of a loan by persons other than a firm of brewers by making the variations referred to in the notes. The register of licenses to be kept by the clerk of the licensing justices of the district under sect. 50 of the Licensing Act, 1910, should be inspected before any advance is made.

(*g*) Stamp, *ad valorem*, of sufficient amount to cover actual and future advances: see Stamp Act, 1891, s. 88, under which (sub-s. 1) a security for future advances or current account, if limited, is to be charged with duty as a security for the limited amount; but (sub-s. 2) where the total amount is unlimited, the security is to be available for such amount only as the *ad valorem* duty impressed thereon extends to cover: see *Suffield* v. *I. R. Commissrs.*, [1908] 1 K. B. 865.

Stamp.

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to the borrower the sum of £——, upon having the repayment thereof, with interest thereon at the rate hereinafter mentioned [and also of any other sum or sums of money from time to time hereinafter to be advanced to or on account of the borrower by the lenders, or owing to them in account current or stated, for goods supplied or otherwise, from the borrower, with interest on any such sums of money so advanced or owing at the rate hereinafter mentioned] (*h*), secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Covenant for payment of principal and of further advances, and amount due on account current, and interest.

1. In pursuance of the said agreement, and in consideration of the sum of £——, now paid to the borrower by the lenders (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders that he the borrower will, on the —— day of —— next, pay to the lenders the sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum [and will (*h*), on such —— day of —— or —— day of —— as shall happen next after the time of the same respectively being advanced or becoming payable, pay to the lenders every other sum of money which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them by the borrower in account current or stated as aforesaid, with interest thereon at the rate of —— per cent. per annum, from the time of the same respectively being advanced or becoming payable]; AND ALSO that if the said principal sum of £—— [or any sum which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them from the borrower in account current or stated as aforesaid] (*h*) shall remain unpaid after the day on which the same is hereinbefore covenanted to be paid [respectively], then so long as the same, or any part thereof, shall remain unpaid, the borrower will pay to the lenders interest for the same, or so much thereof as shall for the time being remain unpaid [respectively] at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— (*i*).

Demise of public-house.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby, as beneficial owner,

(*h*) Where the mortgage is not to brewers omit the words in brackets.

(*i*) Where the mortgage is not to brewers this form of covenant for payment of principal and interest may be adopted, omitting the words in brackets, or, if preferred, the form in Precedent III., *ante*, p. 10, may be used.

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demises unto the lenders all the said public-house and premises by the hereinbefore recited indenture of lease of the —— day of ——, 19—, demised, together with the rights, easements, and appurtenances thereunto belonging, and all fixtures and fittings, whether landlord's or tenant's (except trade machinery and personal chattels within the meaning of the Bills of Sale Acts), now or hereafter during the term for which the same are hereby demised to be in or about the said public-house and premises: To HOLD all the premises comprised in the said indenture of lease, and the said fixtures and fittings hereby demised unto the lenders for all the residue now to come of the said term of —— years, less the last day thereof, subject to the proviso for redemption hereinafter contained.

Habendum.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby, as beneficial owner, assigns unto the lenders, first, ALL the goodwill (*k*) of the business carried on upon the premises hereby demised, and the benefit of all licences held in connection therewith; and secondly, all money to which the borrower, or his assigns, may become entitled under the Licensing (Consolidation) Act, 1910, or any Act amending or re-enacting the same, as compensation (*l*) for the non-renewal of such licences as aforesaid: To HOLD the same unto the lenders subject to the proviso for redemption following.

Assignment of goodwill, &c.

4. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the borrower shall on the said —— day of —— next pay to the lenders the said sum of £——, with interest for the same from the date of these presents, at the rate of —— per cent. per annum [and shall on such —— day of —— or —— day of —— as shall happen next after the time of the same respectively being advanced or becoming owing as aforesaid, pay to the lenders every other sum of money which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them in account current or stated, or otherwise, from the borrower as aforesaid, with interest on such sums of money so advanced or owing from the time of the same respectively being advanced and becoming payable at the rate aforesaid, without any deduction] (*m*),

Proviso for redemption.

(*k*) See *Re Bennett*, [1899] 1 Ch. 316.

(*l*) See Licensing Consolidation Act, 1910, s. 20.

(*m*) Where the mortgage is not to brewers the words in brackets may be omitted.

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then the lenders shall at any time thereafter, upon the request and at the costs of the borrower, surrender the said hereditaments and premises hereby demised and re-assign the premises hereby assigned unto the borrower.

Declaration of trust of nominal reversion.

5. The borrower hereby declares that the borrower will henceforth stand possessed of the reversion hereby excepted out of the said term in trust for the lenders, and to assign and dispose of the same as they shall from time to time direct, subject to such equity of redemption as may for the time being be subsisting by virtue of this mortgage, and hereby empowers the lenders to appoint a new trustee or new trustees of the said reversion at any time or times in the place of the borrower or his assigns, or any trustee appointed under this power as if he or they were incapable of acting in the trusts thereof hereby declared.

Covenants by the borrower

6. The borrower hereby covenants with the lenders that during the continuance of this security, he the borrower, his successors in business, or assigns—

to repair;

(i) Will keep all the demised premises in such a state of repair and insurance as is required by the covenants in that behalf in the said lease contained.

not to remove fixtures, &c.;

(ii) Will not remove the said fixtures and fittings, or any of them, without the consent in writing of the lenders.

to reside on the premises;

(iii) Will reside in the said public-house, and personally carry on the said business thereon.

to purchase malt liquors, &c. of the lenders (*n*);

[(iv) Will purchase all malt liquors consumed or sold upon or sent out from the said premises from the lenders or their assigns, provided that they shall be willing to sell the same to the borrower at current market prices, and the fact of any barrel, other than such as are supplied by the lenders or their assigns, being upon the premises (whether empty or not) shall be conclusive evidence of a breach of this covenant.]

not to assign, &c. without consent;

(v) Will not assign or demise, nor part with possession of the said public-house, without the consent in writing of the lenders or their assigns.

to take out licences and not to forfeit licences;

(vi) Will take out annually (or oftener if necessary) proper licences for carrying on the said trade, and neither he nor they will do or suffer anything whereby the existing licences, or any licences for the time being in force, may be forfeited or the renewal thereof refused.

(*n*) Where the mortgage is not to brewers this sub-clause will be omitted.

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(vii) Will insure and keep insured against loss or forfeiture all licences for the time being in force, in the full value thereof, in the name of the lenders or their assigns in an office to be approved of by them, and will on demand produce to them the policy or policies for such insurances, and the receipts for premiums or other moneys payable in respect thereof, and in case the borrower, his successors in business, or assigns, shall make default in that behalf, the lenders or their assigns may pay all premiums and moneys from time to time payable for keeping such policy or policies on foot, and that all moneys expended by the lenders or their assigns under this provision shall be deemed to be properly paid by them. to insure;

(viii) Will, at the request of the lenders, deliver possession of the premises to such person or persons as may be appointed by the lenders, and will indorse and transfer the said licences to such person or persons, and sign and give all notices required for the legal transfer of such licences or for obtaining new licences to such person or persons as the case may require, and will at the like request withdraw from the books of the excise the name or names of the borrower, his assigns or successors in business, as carrying on trade on the said premises. to deliver up the premises and transfer licences to appointee of lenders.

7. The borrower hereby constitutes and appoints [A., B., and C.], all members of the said firm of —— & Co. (*o*), and each of them, or his or their substitute or substitutes, to be the true and lawful attorneys and attorney for him and in his name to make and execute all such transfers of the said licences or apply for renewals of such licence or licences as aforesaid, and to do all such other acts and take all such steps as may be necessary for rendering valid and effectual the transfer or renewal of any such licence or licences as aforesaid, and for withdrawing the name of the borrower from the books of the excise and from the register of licences as carrying on trade on the said premises, as the borrower might or could do or might or could have done. Power of attorney.

8. It is hereby agreed that the statutory power of sale vested in the lenders by virtue of these presents shall become immediately exerciseable without the necessity of giving notice to the borrower (1) if any interest shall be in arrear for —— days after the day Extension of statutory power of sale.

(*o*) Where the lenders are not a firm of brewers, say, "appoints the lenders."

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hereby appointed for the payment thereof; (2) if the borrower shall become bankrupt, or have a receiving order made against him, or shall enter into any arrangement or composition with his creditors; or (3) if the mortgaged premises or any chattels thereon belonging to the borrower, or other person or persons for the time being entitled to the equity of redemption, shall be taken in execution: And any sale under the statutory power may be made either by assignment or by underlease, and either subject to or free from any incumbrance not binding the lenders.

Power for lenders to carry on the business, &c.,

9. The lenders may at any time hereafter enter upon the premises and carry on the said business either personally or by a sub-manager, and may demise the premises with or without the benefit of the licences for any term not exceeding the residue unexpired of the term granted by the said recited lease, and may accept surrenders of leases and tenancies upon such terms as they may think proper, and make allowances to and arrangements with

and pay outgoings.

tenants, and may pay on behalf of the borrower all moneys payable by the lessee under or in respect of the said recited lease, and all rates, taxes, and other outgoings, and may expend such moneys for repairs, insurance, licenses, or otherwise, as they may deem expedient: And all moneys so paid or expended, with interest thereon at the rate of —— per cent. per annum from the time of expenditure, shall be repaid by the borrower on demand, and in the meantime shall be charged on the mortgaged premises.

Application of rents.

10. It is hereby agreed that all rents and profits received hereunder by the lenders shall be applied, first, in payment of all costs and expenses incurred by them hereunder; secondly, in payment of any outgoings affecting the premises; thirdly, in payment of interest under this security; and the surplus (if any) may, at their option, either be applied in reduction of the principal moneys hereby secured, or may be deposited in a bank, or be paid to the borrower, his heirs, executors, administrators, or assigns.

Application of compensation and policy moneys.

11. All moneys received by the lenders as compensation in respect of the refusal of the licensing authority to renew the licences, or any of them, or in respect of any policy to be effected hereunder, shall be applied by them, first, in the payment of the costs incurred by them hereunder; secondly, in or towards payments of the moneys owing on this security, and subject thereto shall be held in trust for the borrower and his successors in business.

12. [*Provision as to increment value and reversion duties on sale, p.* 8, mutatis mutandis.]

13. PROVIDED ALWAYS, that in these presents, unless the contrary appears, the expression "the borrower" shall mean and include the said [*mortgagor*], his executors, administrators, successors in business, and assigns; and the expression "the lenders" shall mean and include the said firm of —— & Co. and their successors in business, and assigns (*p*). Interpretation clause.

IN WITNESS, &c.

XXXVI. BILL OF SALE *of* PERSONAL CHATTELS *by way of* MORTGAGE (*q*).

THIS INDENTURE (*r*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, WITNESSETH as follows:— Parties (*s*). *Testatum.*

1. In consideration of the sum of £—— now paid (*t*) to the Assignment of chattels

(*p*) Where the lenders are not a firm of brewers, say, "the said [*mortgagees*], their executors, administrators, and assigns."

(*q*) As to bills of sale, see the Bills of Sale Acts, 1878, 1882, and the note in Key & Elphinstone, 10th ed. vol. ii. p. 167. In this precedent the statutory form of a bill of sale is closely followed, the variations and additions being given in brackets: that form expressly provides for variations only as regards the statement of the consideration, the rate of interest, and the stipulated time or times for payment, and also for the insertion of special stipulations or terms as to insurance, payment of rent, or otherwise. As a bill of sale given as a security is void (Bills of Sale Act, 1882, s. 9) unless "in accordance" with the statutory form, it will be advisable to make no variations or additions except as expressly provided: see *Ex parte Stanford*, L. R. 17 Q. B. D. 259, 270; *Thomas* v. *Kelly*, 13 App. Cas. 506, 519.

(*r*) Stamp, *ad valorem* on amount secured.

(*s*) As to the names and descriptions of parties, see *Simmons* v. *Woodward*, [1892] A. C. 100; *Altree* v. *Altree*, [1898] 2 Q. B. 267.

(*t*) If the consideration is less than 30*l.* the bill of sale will be void under sect. 12 of the Act of 1882: *Davis* v. *Usher*, L. R. 12 Q. B. D. 490; *Darlow* v. *Bland*, [1897] 1 Q. B. 125. The bill must be duly attested and registered under the Act of 1878 (s. 8) within seven days after its execution. And see, as to the form of attestation, sect. 9; *Parsons* v. *Brand*, 25 Q. B. D. 110; *Sims* v. *Trollope*, [1897] 1 Q. B. 24; *Coates* v. *Moore*, [1903] 2 K. B. 140. Consideration.

XXXVI. BILL OF SALE OF PERSONAL CHATTELS.

borrower by the lender (the receipt of which is hereby acknowledged) (*u*), he the borrower hereby (*x*) assigns unto the lender, his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereto annexed (*y*), by way of security for the payment of the sum of £——, and interest thereon at the rate of —— per cent. per annum.

by way of security.

Agreements by borrower for payment of principal and interest;

2. The borrower doth hereby agree and declare that he will duly pay to the lender the principal sum aforesaid, together with the interest then due, by equal [*monthly*] payments of £——, on the —— day of —— [every month, the first such payment to be made on the —— day of ——, 19—] (*z*).

3. The borrower doth hereby agree with the lender as follows:—

to observe conditions of tenancy;

(1) That he the borrower will, during the continuance of this

(*u*) The receipt must be acknowledged: see *Davies* v. *Jenkins*, [1900] 1 Q. B. 133.

(*x*) The borrower must not assign as "beneficial owner": see *Ex parte Stanford, ubi sup.*

(*y*) The chattels must be described in the schedule, not in the body of the deed: *Thomas* v. *Kelly*, *ubi sup.*; *Seed* v. *Bradley*, [1894] 1 Q. B. 319. As to what may be included in the schedule, see *Cochrane* v. *Entwistle*, 25 Q. B. D. 116; *Swanley Coal Co.* v. *Denton*, [1906] 2 K. B. 873. As to the inclusion of after-acquired chattels other than substituted fixtures, plant, or trade fixtures mentioned in schedule 6 (2) of the Act of 1882, see *Kelly* v. *Kellond*, 20 Q. B. D. 569; *Thomas* v. *Kelly*, *ubi sup.* And see, as to specific description, *Roberts* v. *Roberts*, 13 Q. B. D. 794; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82; *Davies* v. *Jenkins*, [1900] 1 Q. B. 133.

Date of payment.

Interest.

(*z*) A fixed day for payment must be named. The entire principal, with agreed interest, may be made payable on a fixed date (*Watkins* v. *Evans*, 18 Q. B. D. 386), but a bill of sale will be void if the money is payable on demand (*Hetherington* v. *Groome*, 13 Q. B. D. 789), or within a certain time after demand (*Sibley* v. *Higgs*, 15 Q. B. D. 619), or the payment depends on an event which may or may not happen: *Hughes* v. *Little*, 18 Q. B. D. 32; see also *De Braam* v. *Ford*, [1900] 1 Ch. 142; *Rosefield* v. *Provincial Union Bank*, [1910] 2 K. B. 781.

The instalments may be made payable quarterly or half-yearly, if such is the arrangement; and the rate need not be calculated by the year, *e.g.*, it may be (say) *one* per cent. per month or 1*s.* per 1*l.* per month: *Lumley* v. *Simmons*, 34 Ch. D. 698; *Rosefield* v. *Provincial Union Bank*, [1910] 2 K. B. 781.

The statutory form expressly permits variations as to the stipulated time or times for payment of principal and interest, but the principal

security, pay all rents, rates, taxes, and outgoings, and observe and perform all covenants, conditions, and stipulations which ought to be paid, observed, or performed by the tenant or occupier of the said messuage and buildings, or of any other place or places to or upon which the chattels and things comprised in this security, or any of them, may from time to time be removed or placed, and will on demand produce to the lender the last receipts for the payment of such rents, rates, taxes, and outgoings as aforesaid.

not to remove chattels;

(2) That he will not remove from the said messuage and buildings any of the said chattels and things without the consent of the lender, except such as are worn out or removed for the purpose of repairs, and will replace any chattels or things so worn out by others of equal or greater value (*zz*).

(3) That he will keep the said chattels and things in good order and repair, and also insured against loss or damage by fire in the sum of £—— at the least [*or*, to the full value thereof], in the —— Insurance Co., or some other insurance office to be approved of by the lender, and will pay all premiums and sums from time to time payable for keeping up such insurance on [*or*, within —— days after] the first day on which every such premium or sum shall become payable, and will on demand produce to him or them the policy or policies of such insurance, and the receipt for every premium or sum payable in respect thereof, and that on the refusal or failure of the borrower to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender at any time to effect under the statutory powers in that behalf an insurance of the said chattels and things to an amount not exceeding the sum of £—— [*or*, to the full value thereof].

to permit lender to inspect chattels;

(4) That it shall be lawful for the lender and his agents, at all reasonable times during the continuance of this security, to enter

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and interest are in practice usually made payable by monthly or other instalments. It must be possible to ascertain from the bill of sale what the rate of interest is: *Myers* v. *Elliott*, 16 Q. B. D. 526. Interest made payable "at the rate of 17*l*. 10*s*. for three years" is bad: *Blankenstein* v. *Robertson*, 24 Q. B. D. 543.

Variations.

All the following clauses, with the exception of the saving clause at the end of clause 4, are variations of or additions to the statutory form.

(*zz*) See, as to this provision, *Seed* v. *Bradley*, [1894] 1 Q. B. 319; *Coates* v. *Moore*, [1903] 2 K. B. 140.

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into and upon the said messuage and buildings, and to inspect the state and condition of the said chattels and things, and to take schedules or inventories thereof, and to give notice to the borrower of any defect or want of repair thereof, and that the borrower will thereupon immediately make good and amend such defect or want of repair.

and to repair on notice;

(5) That if the borrower shall refuse, neglect, or fail to make good and amend such defect or want of repair within —— days after such notice as aforesaid, it shall be lawful for the lender to make good or amend the same without prejudice to his other remedies, and that all costs and expenses paid or incurred by him of and incident to making good or amending such defect or want of repair shall be added to the moneys hereby secured and charged upon the chattels and things comprised in this security, with interest thereon at the rate, and payable at the times and in manner, aforesaid, to be computed from the time or respective times of such costs and expenses having been paid or incurred respectively.

power for lender to repair, &c. on default.

4. PROVIDED ALWAYS, that if the borrower shall make default in payment of the said sum of £——, or the interest thereof, at the time herein provided for payment, or in the performance of any covenant or agreement herein contained and necessary for maintaining this security, or during the continuance of this security shall become a bankrupt, or suffer the goods hereby assigned, or any of them, to be distrained for rent, rates, or taxes, or shall fraudulently either remove or suffer to be removed the said goods, or any of them, from the premises upon which they may be, or shall without reasonable excuse (*b*) neglect or refuse, upon demand in writing by the lender to produce to him his last receipts for rent, rates, or taxes, or if execution shall during the continuance of this security be levied against the goods of the borrower under any judgment at law, then, and in any such case, all principal moneys hereby secured, and for the time being re-

Power to seize in certain events (*a*):

(*a*) The events and defaults here enumerated on which the power of seizure is to arise closely correspond with those mentioned in sect. 7 of the Act of 1882. This appears to be the most prudent course, especially when chattels form the only or principal security for the loan.

Reasonable excuse.

(*b*) Where the rent was only a few days overdue, and had not been demanded, it was held that the grantor of a bill of sale had a "reasonable excuse" for not producing the receipt: *Ex parte Cotton,* 11 Q. B. D. 301; *Ex parte Wickens,* [1898] 1 Q. B. 543.

maining unpaid, together with all interest up to the time of such default or event as aforesaid, shall immediately become payable without the necessity for any notice or demand of payment whatsoever, and it shall be lawful for the lender at any time after any such default or event as aforesaid, by himself or his agents or servants, to enter into and upon the said messuage and buildings or other the place or places to or in which the said chattels and things comprised in this security, or any of them, may have been removed or may happen to be, and to seize and take possession of the said chattels and things, or any of them: AND at any time after the expiration of five days from such seizure, without the necessity for any notice or demand of payment whatsoever, to sell all or any of such chattels and things either by public auction or private contract, with powers to buy in and rescind or vary any contract for sale, and to resell without being answerable for loss, and to give effectual receipts for the purchase-money, and to deliver any chattels or things sold to the purchaser or respective purchasers thereof, or as he or they may direct, and generally to do all acts and things which may be necessary or expedient for effectuating such sale: AND it is hereby agreed that the lender shall apply the moneys to arise from any such sale as aforesaid, in the first place, in payment of all costs and expenses of and incident to such sale or otherwise incurred in relation to this security, and in the next place in or towards the payment and satisfaction of all principal, interest, and other moneys for the time being due under this security, and shall pay the surplus (if any) to the borrower, or as he shall direct]: PROVIDED ALWAYS that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the lender for any cause other than those specified in sect. 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

and to sell;

Application of proceeds of sale.

Saving clause.

[5. PROVIDED LASTLY, that all rights and obligations of the borrower under or by virtue of these presents shall extend to his executors, administrators, and assigns, and all powers, rights, and obligations of the lender under or by virtue of these presents shall extend to his executors, administrators, and assigns.]

Interpretation clause.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXXVII. SUB-MORTGAGE.

XXXVII. SUB-MORTGAGE *or* MORTGAGE *of a* MORTGAGE DEBT *and the* SECURITY *for the same* (*c*).

Parties.

Recitals: of mortgage;

of state of mortgage debt:

of agreement for loan.

Testatum.

Covenant for payment of principal and interest.

Second *testatum.*

Assignment of mortgage debt and security.

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS by an indenture of mortgage dated the —— day of ——, 19—, and made between [A. B.], of the one part, and the borrower, of the other part, the hereditaments hereby assured were conveyed unto and to the use of the borrower, his heirs and assigns, by way of mortgage, for securing the repayment to the borrower, his executors, administrators, or assigns, of the sum of £—— and interest at the rate of —— per cent. per annum; AND WHEREAS the said sum of £—— still remains owing to the borrower on the security of the said indenture of mortgage, together with arrears of interest thereon amounting to the sum of £—— [*or*, "but all interest thereon has been paid up to the date of these presents"]. AND WHEREAS the lender has agreed to lend to the borrower the sum of £—— upon having the repayment of the same, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*covenant for payment of principal and interest*, ante, *p.* 18].

2. For the consideration aforesaid the borrower, as beneficial owner, hereby assigns unto the lender the said principal sum of £—— owing on the security of the said indenture as aforesaid; AND all interest now due and henceforth to accrue due thereon, and the benefit of all securities for the same and of all powers (including the statutory power of sale) and remedies thereby con-

(*c*) A sub-mortgage is preferable to a transfer of part of the mortgage debt, as it obviates the necessity which would arise under the latter form of security of joining the original mortgagee and the transferee in foreclosure proceedings. As to trustees lending on a sub-mortgage, see *Smethurst* v. *Hastings*, 30 Ch. D. 490; *Chapman* v. *Browne*, [1902] 1 Ch. 785.

Stamp.

(*d*) Stamp, *ad valorem* on amount secured.

ferred [together with full power for the lender, his executors, administrators, or assigns in the name or names of the borrower, his executors, administrators, or assigns, or otherwise to demand, sue for, receive, and give effectual discharges for the said principal sum and interest, or any part thereof respectively, and to settle all accounts in respect thereof]: To HOLD all the premises hereby assigned unto the lender, subject to the proviso for redemption hereinafter contained.

Power of attorney (*e*).

Habendum.

3. For the consideration aforesaid the borrower hereby, as beneficial owner, grants unto the lender ALL THOSE, &c. [*describe parcels*], and all other, if any, the hereditaments comprised in the said indenture of mortgage, TO HOLD unto and to the use of the said lender, his heirs and assigns, subject to such right or equity of redemption as is now subsisting therein by virtue of the said indenture of mortgage and also to the proviso for redemption hereinafter contained.

Third *testatum*. Grant of freeholds comprised in mortgage.

4. PROVIDED ALWAYS, that if the said sum of £——, with interest thereon at the rate aforesaid, shall be paid on the —— day of —— in pursuance of the covenant in that behalf hereinbefore contained, then the said principal sum and interest, hereditaments, and premises hereby assigned and granted respectively, shall, at the request and cost of the borrower, his executors, administrators, or assigns, be reconveyed, as to the said principal sum and interest hereby assigned, to the borrower, his executors, administrators, and assigns; and as to the said hereditaments and premises to the use of the borrower, his heirs and assigns, but as to such last mentioned premises, subject to such right or equity of redemption as shall for the time being be subsisting therein under or by virtue of the hereinbefore recited indenture of mortgage.

Proviso for redemption.

5. [*Covenant against registration*, ante, *p.* 8.]

(*e*) Except in cases which are not within sect. 25 (6) of the Judicature Act, 1873, *e.g.*, where the assignment is not of a definite sum (see *Jones* v. *Humphreys*, [1902] 1 K. B. 10), a power of attorney is not necessary. As to what assignments are "absolute" within that section, see *Burlinson* v. *Hall*, 12 Q. B. D. 347; *Tancred* v. *Delagoa Bay Rly. Co.*, 23 Q. B. D. 239; *Durham Brothers* v. *Robertson*, [1898] 1 Q. B. 765; *Hughes* v. *Pump House Hotel Co.*, [1902] 2 K. B. 190. Express notice in writing must be given to the original mortgagor, of whom inquiries should be made as to the state of the accounts: see *Bateman* v. *Hunt*, [1904] 2 K. B. 530. As to the effect of notice given by equitable sub-mortgagees, see *Hopkins* v. *Hemsworth*, [1898] 2 Ch. 347.

XXXVII. SUB-MORTGAGE.

6. [*Provision as to increment value and reversion duties on sale, ante, p. 8.*]

Proviso that lender shall not be bound to enforce security.

7. PROVIDED ALWAYS, and it is hereby agreed that it shall not be obligatory on the said lender, his executors, administrators, or assigns, to demand or require payment of, or institute, maintain, or do any act or thing for the recovery of, the said principal sum and interest hereby assigned, or any part thereof, nor shall he or they be responsible for any loss which may be occasioned by his or their omitting or neglecting to enforce any rights or remedies in respect of the said principal sum and interest, or any part thereof.

Receipt clause.

8. PROVIDED ALWAYS, that the receipt in writing of the lender, his executors, administrators, or assigns, shall be a sufficient discharge for any moneys arising under the said indenture of mortgage, or under the statutory power of sale thereby conferred.

Covenant that mortgage debt is due.

9. AND the borrower hereby covenants with the lender that the principal sum of £—— [together with arrears of interest thereon amounting to the sum of £——] is now due and owing to the borrower on the security of the said indenture of mortgage.

IN WITNESS, &c.

XXXVIII. MORTGAGE *of a* LEGACY. VARIATION (*in notes*) *where the* MORTGAGE *is of a* REVERSIONARY UNDIVIDED SHARE *in* GENERAL PERSONAL ESTATE.

THIS INDENTURE (*f*), made the —— day of ——, 19—,

Parties.

BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagor*], of, &c. (hereinafter

Recital of will bequeathing legacy.

called "the lender"), of the other part; WHEREAS [*testator*], of, &c., deceased, the father of the borrower, by his will dated the —— day of ——, 19—, bequeathed unto each of his children the sum of 1,000*l.*, to be payable when such children should respectively attain the age of twenty-one years (*g*), and appointed

Stamp.

(*f*) Stamp, *ad valorem* on amount secured.

Recital of will bequeathing share of general personal estate.

(*g*) *Or*, "bequeathed unto [*trustees*], all his personal estate whatsoever and wheresoever, upon trust [subject to and after payment thereout of his debts, funeral and testamentary expenses and the legacies thereby, or by any codicil thereto, bequeathed] to pay the income thereof to [*wife*], his wife, during her natural life, and, at her decease, to divide the same personal estate equally between

[*executors*], executors of his said will; AND WHEREAS the said [*testator*] died on the —— day of —— without having revoked or altered his said will, which was duly proved by the said [*executors*], on the —— day of ——, in the Principal Probate Registry (*h*); AND WHEREAS the borrower attained his age of twenty-one years on the —— day of —— (*i*); AND WHEREAS [the said legacy has not yet been paid, and] the lender has agreed to lend the borrower the sum of £——, upon having the same with interest secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

XXXVIII. MORTGAGE OF A LEGACY OR SHARE IN RESIDUE.

Of death of testator and probate of will;

that borrower is entitled to legacy;

that legacy still unpaid and agreement for loan.

1. In consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), he the borrower covenants [*covenant to pay principal and interest*, ante, *p.* 18].

Testatum.

2. For the consideration aforesaid, the borrower, as beneficial owner, assigns unto the lender ALL THAT the (*l*) legacy or sum

Second *testatum.*

Assignment of legacy (*k*).

his children, share and share alike, for their respective absolute use and benefit."

(*h*) "AND WHEREAS the said [*wife*], the widow of the said [*testator*], is still living; AND WHEREAS the said [*testator*] left four children living at his decease, and the borrower is one of such children."

Recital that widow still living and of title of borrower.

(*i*) If an action has been instituted for carrying into effect the trusts of the testator's will, in which an order has been made, say,

"AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, dated the —— day of ——, made by Mr. Justice ——, in an action wherein [C. D. and others are plaintiffs, and the said [*executors*] are defendants: it was ordered that the trusts of the said [*testator's*] will should be established and carried into execution, and that it should be referred," &c. [*state the terms of the order, and the subsequent proceedings, if any, in Chambers*].

Recital of administration action.

(*k*) The trustees or executors are not bound to pay to the mortgagee more than is due to him on the mortgage: see *Re Bell*, [1896] 1 Ch. 1; and *Hockey* v. *Western*, [1898] 1 Ch. 350.

(*l*) "One undivided fourth part or share of him the borrower, and all other his part and share of and in the [residuary] personal estate of the said [*testator*], deceased, so given and bequeathed by the said will as aforesaid, and all and every such sum or sums of money as shall be payable to or recoverable by the borrower in respect thereof."

Or share of residue.

XXXVIII. MORTGAGE OF A LEGACY OR SHARE IN RESIDUE.

of 1,000*l.* so bequeathed to him the borrower by the hereinbefore recited will of the said [*testator*], deceased, as aforesaid, and all moneys to become due and payable in respect of the same legacy (*m*); together with full power to demand, sue for, recover, receive, and give effectual discharges for the same legacy (*n*) and moneys in the name or names of the borrower, his executors or administrators, or otherwise: To HOLD the said legacy (*n*) and other the premises hereby assigned unto the lender, his executors, administrators, and assigns, upon trust to receive the same, and thereout in the first place to pay all costs and expenses of and incidental to obtaining payment thereof, and all other costs, charges, and expenses properly incurred by the lender, his executors, administrators, or assigns hereunder, and in the next place to retain to himself and themselves all principal moneys and interest which shall then be due to him or them under or by virtue of this security; AND to pay the surplus (if any) of the said legacy (*n*) and premises unto the borrower, his executors, administrators, or assigns (*o*).

Habendum.

3. [*Proviso for redemption*, ante, *p.* 83.]

IN WITNESS, &c.

(*m*) Add, if the assignment is of a fund in Court—

"And all and every such sums or sum of money as shall be payable to or recoverable by the borrower under or by virtue of the hereinbefore recited order, or otherwise in the hereinbefore mentioned action."

(*n*) "undivided part or share."

(*o*) If the assignment is of a fund in Court, proceed as follows:—

Power to obtain stop order.

"AND the borrower hereby empowers the lender, his executors, administrators, or assigns, at any time or times during the continuance of this security, as well before as after the said —— day of —— next, to give such notices, apply for and obtain such stop or other orders, make such inquiries, obtain such evidence, and take such proceedings and do such other acts for protecting, perfecting, proving, or upholding his or their title to the said premises hereby assigned as he or they shall think fit, and for the purposes aforesaid to use the borrower's name, and to instruct solicitors and counsel accordingly, and all moneys expended by the lender or his assigns under this provision shall be deemed to be properly paid by him or them."

As to stop orders.

In the case of a fund in Court, a stop order is equivalent to notice, and notice to the trustees is ineffectual: see *Greening* v. *Bickford*, 5 Sim. 195;

XXXIX. MORTGAGE *of* REVERSIONARY INTEREST *in a* FUND *in* COURT. PROVISO *for* CAPITALISATION *of* INTEREST. POWERS *for* MORTGAGEE *to* OBTAIN *a* STOP ORDER *and* INSTITUTE *and* DEFEND PROCEEDINGS *in* ACTION.

XXXIX. MORTGAGE OF REVERSIONARY INTEREST IN FUND IN COURT.

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; WHEREAS the borrower, as one of the children of [A. B.], his mother, is or claims to be entitled, under a will dated the —— day of ——, of [*testator*], deceased, in reversion expectant on the death of [*person entitled to life interest in the fund*], to one equal —— part, or share of and in the residuary estate of the said [*testator*], and the moneys, stocks, funds, and securities for the time being constituting or representing the same; AND WHEREAS [*recite any proceedings in the action*, ante, *p.* 109, *n.* (*i*)]; AND WHEREAS the funds now constituting or representing the residuary estate of the said [*testator*] consist of the sum of 16,214*l.* 19*s.* 6*d.* £2½ per cent. Consolidated Stock, standing in the name of the Paymaster-General of the Chancery Division of the High Court of Justice in the said action; AND WHEREAS the lenders have agreed to lend to the borrower the sum of £—— upon having the repayment of the same with interest at the rate hereinafter mentioned secured in manner hereinafter appearing; AND it has also been agreed that the said loan shall be continued and the interest to accrue upon the said sum of £—— shall be forborne and allowed to accumulate by way of compound interest at the option of the borrower for the period and in the manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of title or claim of borrower;

of proceedings in action, and state of fund in Court;

of agreement for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration

Covenant to pay principal and interest.

Pinnock v. *Bailey*, 23 Ch. D. 497; *Montefiore* v. *Guedalla*, [1903] 2 Ch. 26. Stop orders are usually obtained upon an application by summons; but where a fund exceeding 1,000*l.* has been paid into Court under the Trustee Act, 1893, and no prior application has been made, a petition is necessary: *Re Toogood* (1887), W. N. 109. As to stop orders, see R. S. C. 1883, Order XLVI.; Daniell, Ch. P. 8th ed. 1428. If the fund is in the hands of trustees, inquiry should be made of them individually as to prior incumbrances, and notice of the assignment should be given to them: *Dearle* v. *Hall*, 3 Russ. 1; *Re Freshfield's Trust*, 11 Ch. D. 198; *Ward* v. *Duncombe*, [1893] A. C. 369. See also, as to stop orders, K. & E. 10th ed. vol. 2, p. 43, note (*d*).

(*p*) Stamp, *ad valorem* on the principal amount secured, and, it would seem, a further stamp to cover the estimated amount of capitalized interest: see Stamp Act, 1891, s. 88.

Stamp.

XXXIX. MORTGAGE OF REVERSIONARY INTEREST IN FUND IN COURT.

of the sum of £—— now paid to the borrower by the lenders out of moneys belonging to them on a joint account (the receipt of which sum of £—— is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest*, ante, *p.* 10].

Second *testatum*.

2. In further pursuance of the said agreement and for the consideration aforesaid, the said borrower hereby, as beneficial

Assignment of reversionary interest.

owner, assigns unto the lenders, ALL THAT the part or share, parts or shares, to which he the borrower, as one of the three children of the said [A. B.], his mother, is entitled in reversion expectant on the death of the said —— as aforesaid under the hereinbefore recited will of the said [*testator*], or otherwise, of or in the said sum of stock and of or in all other (if any) the moneys, stocks, funds, and securities, for the time being constituting or representing the said residuary estate, with all powers and remedies for recovering and obtaining payment and transfer of the said share or shares and premises hereby assigned: To HOLD the same unto the lenders, subject to the proviso of redemption following.

3. [*Proviso for redemption*, ante, *p.* 10, *saying*, "reassign the premises unto the borrower or as he shall direct."]

Proviso that principal shall not be called in during joint lives of life tenant and borrower, and for capitalisation of interest (*q*).

4. PROVIDED ALWAYS, that during the period of —— years from the date of these presents, if the said [*person entitled for life*] and the borrower shall both of them so long live, the said principal sum of £—— shall not, nor shall any part thereof, be called in, and in the like event the interest accruing upon the said principal sum of £—— during such period of —— years, and also all interest accruing upon that or any other interest forborne and allowed to accumulate by virtue of this present proviso, shall from time to time, and as the same shall accrue half-yearly, be forborne and added to the said principal sum of £—— as or in the nature of a further advance; AND shall carry interest at the rate of —— per cent. per annum, which shall be considered to be accrued due and payable from time to time on the respective half-yearly days hereinbefore appointed for payment of interest on the said principal sum of £——, so that by the addition and capitalisation of interest as aforesaid, the total principal moneys hereby secured may be augmented upon the footing of an accumulation at compound interest computed at the rate of —— per cent.

(*q*) In the absence of contract, simple interest only can be charged (*Daniell* v. *Sinclair*, 6 App. Cas. 181); but compound interest may be charged by the mortgage: *Clarkson* v. *Henderson*, 14 Ch. D. 348.

per annum, with rests taken or made half-yearly on the —— day of —— and the —— day of —— respectively.

Charge of capitalised interest.

5. And it is hereby agreed that all such additions by means of capitalised interest, whether on the said principal sum or any interest added thereto in the nature of further advances, shall be charged upon all and singular the premises hereby assigned, and shall to all intents and purposes be within the scope and operation of the present security; And further, that all such additions to the said principal sum in the nature of further advances shall be payable by the borrower upon the same being demanded by the lenders; And he the borrower hereby covenants for payment thereof upon demand accordingly; but, nevertheless, it is hereby agreed that in the event hereinbefore specified for the continuance of the said principal sum of £——, any additions made thereto as aforesaid shall not, nor shall any part thereof or interest thereon, be called in during the said determinable period of —— years from the date of these presents:

Proviso that borrower may nevertheless pay interest so as to prevent capitalisation.

6. Provided always, that, notwithstanding anything hereinbefore contained, it shall be lawful for the borrower at any time within —— days after any half-yearly day appointed for the payment of interest under these presents, to pay the interest accruing on such half-yearly day, which would under the proviso hereinbefore in that behalf contained be treated as or on the footing of a further advance made on that day; And every such payment of interest within —— days after the appointed half-yearly day, shall wholly prevent the capitalisation of the interest so paid, but without interfering with the computation and capitalisation of prior or subsequent interest; And that in the event of the death of the said [*person entitled to life interest*] or of the borrower taking place within the said period of —— years, then immediately and without any notice being given or any step taken for the purpose, the said provisions hereinbefore contained for continuance of the said principal sum of £—— and forbearance of interest shall cease to have any further or prospective operation, except so far as may be necessary for ascertaining the amount of the principal moneys and interest owing upon the present security at the time of the happening of such event.

Proviso determining provision for continuance of loan and capitalisation of interest in certain events.

Power to obtain stop order.

7. Provided always, that it shall be lawful for the lenders, at any time during the subsistence of this security, to appear either as plaintiffs or defendants for the borrower in the said

XXXIX. MORTGAGE OF REVERSIONARY INTEREST IN FUND IN COURT.

action or any proceedings taken or to be taken therein for the purpose of obtaining a stop order or stop orders (*r*), or of protecting the share, right, and interest of the borrower in the premises and otherwise to act in relation to the premises as the lenders shall from time to time think proper, without the necessity of serving any notice or order upon the borrower, or any person or persons in his behalf, or of obtaining his concurrence, and for the purposes aforesaid to instruct solicitors, counsel, and others, as the lenders may be advised: PROVIDED ALSO that for the purpose of enabling the lenders to obtain the full benefit and advantage of the assignment hereby made, the borrower hereby authorises and empowers the lenders to institute, prosecute, defend, appear or concur in, or compromise, or put an end to all such actions or other proceedings as the lenders shall think expedient to institute, or which shall have been instituted either for recovering possession or obtaining payment of the part or share, parts or shares, and premises hereby assigned, or any of them, or any moneys which shall or may become recoverable or receivable in respect of the same or any of them, when and as the premises shall cease to be reversionary and become recoverable or receivable, and generally for such purposes, or any of them, to execute and give all such receipts, agreements, and releases by deed or otherwise as they shall think reasonable and proper, and to use the name of the borrower as the lenders shall think fit; AND it is hereby expressly agreed that all costs, charges, and expenses as between solicitor and client to be incurred in the exercise of the powers hereby given, or any of them, shall be considered as covered by this present security, and be allowed accordingly.

Power for lenders to institute and defend proceedings.

8. [*Interpretation clause*, ante, *p.* 13.]

IN WITNESS, &c.

(*r*) See, as to stop orders, *ante*, p. 111, note (*o*).

XL. MORTGAGE *of a* SHARE *in a* PARTNERSHIP BUSINESS (*s*).

XL. MORTGAGE OF SHARE IN PARTNERSHIP BUSINESS.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS the borrower is a partner in the firm of ——, carrying on the business of ——, at ——, in the county of ——, under articles of partnership dated the —— day of ——, 19—; AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment of the same secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of partnership;

of agreement for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £——, now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest*, ante, *p.* 18].

Covenant to pay principal and interest.

2. For the consideration aforesaid the borrower, as beneficial owner, hereby assigns unto the lender, ALL that his share and interest in the said business, and in the goodwill thereof, and in the capital, book debts, and assets thereof, as well present as future: To HOLD the same unto the lender, subject to the proviso for redemption following:—

Second *testatum.*

Charge of shares in partnership.

3. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of —— next, pay

Proviso for redemption.

(*s*) A person may generally advance money to a partnership firm or to one of its members on the security of the property or of a share in the property of the partnership, without thereby becoming a partner. As to the rights of an assignee of a share in a partnership, see the Partnership Act, 1890, s. 31. The mortgagee of a share can require an account of the mortgagor's interest in the partnership, as from the date when the mortgagee proceeded to take possession under the mortgage, or if a dissolution has previously taken place, then as from the date of the dissolution: *Whetham* v. *Davey*, 30 Ch. D. 574; *Watts* v. *Driscoll*, [1901] 1 Ch. 294. The reputed ownership clause in the Bankruptcy or Bills of Sale Acts does not affect a mortgage of a share of a partnership: see *Re Bainbridge*, 8 Ch. D. 218. As to the effect of an assignment by a limited partner of his share in the partnership with the consent of his partners, see the Limited Partnerships Act, 1907, s. 6 (5) (b).

Mortgage of share in a partnership.

(*t*) Stamp, *ad valorem* on amount secured.

Stamp.

XL. MORTGAGE OF SHARE IN PARTNERSHIP BUSINESS.

to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his executors, administrators, or assigns, re-assign the premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

Covenants by borrower: to observe articles of partnership;

4. The borrower hereby covenants with the lender that he the borrower will, so long as he shall continue a partner in the said firm, and during the continuance of this security, duly observe and perform all the covenants, conditions, and stipulations contained in the said articles, and on his part to be observed and performed; And will not do or suffer anything whereby the said partnership may be determined, or the said share or interest, and premises hereby charged, or any of them, may be incumbered or alienated, save in the ordinary course of business (*u*), or otherwise prejudicially affected in any way whatsoever; And will at all times during the continuance of this security give to the lender, his executors, administrators, or assigns, all such information as he or they may reasonably require as to the affairs of the said business and its liabilities, assets, profits, and losses, and, provided that his partners will consent, will allow the lender, his executors, administrators, or assigns, to inspect the books of the partnership, and make copies and extracts therefrom.

to give information as to the state of the business.

In witness, &c.

XLI. MEMORANDUM *of* Deposit *of* Title Deeds (*x*).

Memorandum of deposit.

MEMORANDUM (*x*) that on the —— day of ——, 19—, I [*depositor*], of, &c., deposited with [*depositee*], of, &c., the title

(*u*) This exception, if not expressly mentioned, would be implied: see *Taylor* v. *McKeand*, 5 C. P. D. 358.

Stamp and effect of simple memorandum of deposit.

(*x*) A memorandum in this form need not be under seal, and being under hand only, is liable to stamp duty at the lower rate of 1*s.* for every 100*l.* and any fractional part of 100*l.* of the amount secured (Stamp Act, 1891, s. 86 (2) and schedule, Mortgage Bond, &c. (3)), and a further stamp at the same rate to cover further advances (sect. 88). The mortgagee does not thereby acquire any powers of sale, &c. by virtue of the Conveyancing Act, 1881. In *Backhouse* v. *Charlton*, 8 Ch. D. 444, it was held that the remedy of the mortgagee was by foreclosure, not by sale; but he may have an order in his foreclosure action for sale of the mortgaged property:

deeds and documents relating to certain lands and hereditaments situate at ——, in the county of ——, and specified in the schedule hereto, to secure the repayment to him, on the —— day of —— next, of £—— this day advanced to me by him, and any further advances which he may hereafter make to me with interest at the rate of —— per cent. per annum and costs. XLI. MEMORANDUM OF DEPOSIT OF TITLE DEEDS.

(*Signature of Depositor.*)

THE SCHEDULE ABOVE REFERRED TO.

XLII. MEMORANDUM *of* AGREEMENT *and* CHARGE *to accompany* DEPOSIT *of* TITLE DEEDS *to secure* REPAYMENT *of a* LOAN (*y*).

MEMORANDUM OF AGREEMENT (*z*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; WHEREAS, at the request of the borrower, the lenders have this day advanced to him out of moneys belonging to them Parties. Recitals: of loan;

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see Conveyancing Act, 1881, s. 25 (2). In *Oldham* v. *Stringer* (1884), W. N. p. 235 (*S. C.*, 33 W. R. 251; 51 L. T. 895), an order for sale was made where there was a deposit of deeds unaccompanied by any memorandum. A deposit of deeds is an imperfect mortgage, which the mortgagee is entitled at any time to have perfected by a formal mortgage: *Parker* v. *Housefield*, 2 My. & K. 419. Under an equitable mortgage by deposit of title deeds the mortgagor is entitled to six months for redemption (see *Parker* v. *Housefield, sup.*), but the mortgagee is not entitled to six months' notice or interest in lieu of notice: see *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385. As to registering a memorandum of deposit in Yorkshire, see the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 7; and *Battison* v. *Hobson*, [1896] 2 Ch. 403, at 412.

(*y*) As to equitable mortgagees by deposit of deeds, see notes to *Russel* v. *Russel* in White & Tudor, L. C.

(*z*) This memorandum should be executed in duplicate, and if under hand only, should be stamped with an *ad valorem* stamp at the lower rate (see last precedent, note (*x*)); but at the higher rate of 2*s.* 6*d.* for every 100*l.* if under seal: *United Realization Co.* v. *Inland Revenue Commissioners*, [1899] 1 Q. B. 361. If clause 3 is inserted, the agreement must be under seal, and the higher duty will be payable: see Shep. Touch. 58. Stamp.

XLII. MEMORANDUM OF DEPOSIT AND CHARGE.

on a joint account the sum of £—— (the receipt whereof is hereby acknowledged), to bear interest after the rate of —— per cent. per annum from the day of the date of these presents; AND WHEREAS

of deposit of deeds.

the borrower has this day deposited with the lenders, by way of equitable mortgage for securing the sum of £—— and interest after the rate aforesaid, the several deeds and documents of title mentioned in the schedule hereto, which deeds and documents relate to certain lands and hereditaments of the borrower at ——, in the county of ——: NOW THESE PRESENTS WITNESS as follows:—

Charge and agreement to perfect title and execute mortgage (*a*);

1. In consideration of the premises, the borrower hereby charges all his estate and interest of and in the said lands and hereditaments with the said principal sum of £—— and interest thereon at the rate and in manner aforesaid, and agrees that he the borrower will at his own cost perfect and evidence the title to the said estate to the satisfaction of the counsel in the law of the lenders, and at the like cost, on their request, execute a legal mortgage of the said estate, to be prepared by their solicitor, and to contain all such powers and provisions as their counsel in the law shall advise.

that meanwhile lenders shall be entitled to remedies, &c. (*b*).

2. IT IS HEREBY ALSO AGREED that in the meantime the lenders and the survivors and survivor of them, and the executors or administrators of such survivor, and their or his assigns, shall have all such remedies as they or he would be entitled to as equitable mortgagees by deposit of deeds, and also all such other remedies (if any) as they or he ought to have or be held entitled to in consequence or by virtue of the said advance or of these presents.

Power of attorney.

3. The borrower hereby appoints the lender his attorney for him, and in his name and on his behalf, and as his act and deed or otherwise, to execute such legal or formal mortgage as afore-

(*a*) As to the effect of an agreement to execute a legal mortgage, see *Maxfield* v. *Burton*, L. R. 17 Eq. 15; *Farmer* v. *Pitt*, [1902] 1 Ch. 954.

(*b*) The mortgagee can sell under sect. 21 (2) of the C. Act, 1881, but until a legal mortgage has been executed he cannot under that section convey the legal estate: *Re Hodson and Howe*, 35 Ch. D. 668. To enable him to do so an irrevocable power of attorney should be inserted, as in the next clause; but if the loan is merely a temporary transaction, it may not be necessary to do more than deposit the deeds as a security, omitting clause 3.

said, or any deed, assurance, or act which may be required or may be deemed proper on any sale of the said hereditaments and premises, or any part thereof, under the power of sale applicable hereto, in order to vest the legal estate or other the estate or interest of the borrower therein in the purchaser or purchasers, with power to appoint a substitute or substitutes for the purposes aforesaid, or any of them.

As witness, &c.

The Schedule above referred to.

XLIII. MEMORANDUM *of* Deposit *by way of* Equitable Mortgage *to a* Bank *to secure* Balance *of* Account Current.

To the —— Banking Company.

Memorandum of deposit.

MEMORANDUM (*c*): We, the undersigned [*mortgagor*], of, &c., and [*mortgagor*], of, &c., hereby declare that the several documents mentioned in the schedule hereto have been deposited, and shall remain with you as a security for the payment to you of all money due or to become due, or from time to time accruing due from us to you on any account whatsoever, including charges for interest, discount, commission, and all costs, charges and expenses which you may incur in enforcing or obtaining payment of such money, or in realising this or any further security; And we hereby agree to pay to you immediately upon demand all such money: And we hereby charge the hereditaments and premises comprised in such documents respectively, and all fixtures now or hereafter to be thereon, with the payment to you of all such money (*d*); And we hereby declare that the powers and indemnities given to mortgagees by the Conveyancing Acts, 1881 to 1911, are intended to and shall apply to the security intended

Agreement to repay loan.

Charge of lands, &c.

Declaration that mortgagees may exercise statutory powers.

(*c*) Stamp, *ad valorem* on probable amount of advances. If under hand, at the lower rate: see *ante*, p. 116, note (*y*). If the last clause is inserted containing a power of attorney to execute deeds, the instrument would have to be under seal, and the higher rate of stamp duty would be payable: see notes to last precedent. Stamp.

(*d*) Where only a temporary loan is contemplated the memorandum might stop here.

XLIII. EQUITABLE MORTGAGE BY DEPOSIT TO BANK.

to be hereby created, but with the variation that the power of sale conferred by the Conveyancing Act, 1881, shall not be subject to the provisions contained in the 20th section thereof, but shall be exercisable at any time hereafter immediately upon any money becoming due from us to you; And we agree to execute any further deed or document for assuring the hereditaments and premises aforesaid unto and vesting the same in you, with all such powers of entry, leasing, sale, and otherwise for securing immediate payment of all such money as your solicitor may advise, such deeds and documents respectively to be prepared by such solicitor at our expense; And we further hereby declare, that so long as any such money shall be due or accruing due to you, the present trustees of the will of [*testator*] mentioned in the said schedule, will stand possessed of the legal estate in the said hereditaments and premises, upon trust for you and any purchaser or purchasers from you. [And we hereby appoint your general manager for the time being receiver of the rents and profits of the said hereditaments and premises, and also attorney for us, to sign, seal, and deliver any such further deed or document as aforesaid; And we hereby further declare, that all money (including penalties) which shall be paid by you or on your behalf for stamping this and any other document of title shall, for all the purposes of this deed, be considered as money due from and payable by us, and be included in and covered by this security.]

Agreement to execute mortgage.

Appointment of receiver and power of attorney.

As witness, &c.

The Schedule above referred to.

XLIV. EQUITABLE Charge *by way of* Second Mortgage, *as an* Additional Security (*e*).

Charge of lands.

KNOW ALL MEN by these presents (*f*), that I [*mortgagor*], of, &c., hereby charge all my estate and interest of and in the

(*e*) This security may, of course, be effected by a formal second mortgage (for a precedent of which see *ante*, p. 18). A charge in the above form should be by deed, so as to attach to itself the statutory power of sale, &c. Notice of this charge should be given to the prior incumbrancer.

Stamp.

(*f*) Stamp, *ad valorem* at the rate of 6*d.* for every 100*l.* and for any fractional part of 100*l.* of the amount secured: see Stamp Act, 1891, sched. *tit.* Mortgage Bond, &c. (2).

XLIV. EQUITABLE CHARGE OF LANDS AS ADDITIONAL SECURITY.

land and hereditaments, known as the —— Farm, situate in the parish of ——, in the county of ——, and containing by admeasurement —— acres or thereabouts, with the payment to [*mortgagee*], of, &c., his executors, administrators, or assigns, on the —— day of —— next [*or*, on demand], of all principal and interest moneys secured by an indenture of mortgage, dated the —— day of ——, 19—, and made between myself of the one part, and the said [*mortgagee*] of the other part, with interest thereon at the rate of —— per cent. per annum; subject nevertheless to an indenture, dated the —— day of ——, 19—, and made between [*parties*], whereby the premises were conveyed to the said [*first mortgagee*] by way of mortgage, to secure the payment of a principal sum of £—— and interest thereon at the rate of —— per cent. per annum; And I hereby agree at any time upon the request of the said [*mortgagee*], his executors, administrators, or assigns, to make and execute to him or to them, at my own cost, a legal mortgage of the premises hereby charged with such powers, covenants and conditions, and with such restrictions upon the exercise by me of any statutory or other powers, and generally in such manner and form as he or they may require, and that meanwhile I will not exercise any of such powers without the previous consent in writing of the said [*mortgagee*], his executors, administrators, or assigns; And I hereby agree that I will at all times hereafter during the continuance of this security, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, produce to him or to them, or to such person or persons as he or they shall direct, the receipt for the payment of the interest which shall have accrued due under the said indenture of mortgage of the —— day of ——, 19— [*the first mortgage*], on the half-yearly day appointed for payment of such interest, immediately preceding the making of such request.

Agreements by debtor;

to execute mortgage;

to produce receipts for interest on first mortgage (*g*).

In witness, &c.

(*g*) This proviso may usefully be inserted in any *puisne* mortgage or charge where the amount secured by the first mortgage bears a considerable proportion to the estimated value of the property.

XLV. FURTHER CHARGE BY INDORSEMENT.

XLV. DEED *of* FURTHER CHARGE *by* INDORSEMENT (*h*).

THIS INDENTURE (*i*), made the —— day of ——, 19—,

Parties.

Testatum.

BETWEEN the within named [*mortgagor*], of the one part, and the within named [*mortgagee*], of the other part, WITNESSETH as follows:—

Covenant to pay principal and interest.

1. In consideration of the sum of £—— now paid to the said [*mortgagor*] by the said [*mortgagee*] (the receipt whereof is hereby acknowledged), the said [*mortgagor*] hereby covenants with the said [*mortgagee*] to pay to him, his executors, administrators, or assigns, on the —— day of ——, 19— (*k*), the sum of £—— and interest thereon in the meantime at the rate of —— per centum per annum; AND ALSO so long after that day as any principal money shall remain due under this security, to pay to him or them interest thereon at the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in each year.

Charge.

2. For the consideration aforesaid, the said [*mortgagor*], as beneficial owner (*l*), hereby declares that all the lands and hereditaments [*or*, property] comprised in the within written indenture shall stand charged with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £—— and the interest thereon hereinbefore covenanted to be paid, as well as of the sum of £—— and interest secured by the within written indenture.

IN WITNESS, &c.

(*h*) See Form II. given in the 4th schedule to the Conveyancing Act, 1881, from which this precedent is adapted. A deed of further charge should, if possible, be indorsed on the original mortgage so as to be inseparable therefrom. If, however, the mode of engrossment or other circumstances render this impossible or inconvenient, the deed will generally be made supplemental to the original mortgage, so as to avoid the necessity of reciting it: see the next precedent. A form of further charge by independent deed reciting the mortgage is given *post*, Precedent XLVIII., p. 126.

Stamp.

(*i*) Stamp, *ad valorem* at the higher rate on amount of further charge.

(*k*) This will be the next ensuing half-yearly day appointed by the original mortgage for payment of interest.

(*l*) As to the implied covenants, see Conveyancing Act, 1881, s. 7 (1) (C). This would seem to be a "conveyance by way of mortgage" within the meaning of that sub-section, since for the purpose of the Act "conveyance" includes "assurance" (see sect. 2 (v.)), and "mortgage" includes "any charge on any property for securing money" (sect. 2 (vi.)), and "conveys" has a meaning corresponding with "conveyance": sect. 2 (v.).

XLVI. DEED *of* FURTHER CHARGE *by* DEED SUPPLEMENTAL *to the* ORIGINAL MORTGAGE.

XLVI. FURTHER CHARGE BY DEED SUPPLEMENTAL.

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c., of the one part, and [*mortgagee*], of, &c., of the other part; AND supplemental to an indenture of mortgage (hereinafter referred to as the principal indenture), dated the ——day of ——, 19—, and made between [*parties*] for securing the sum of £—— and interest thereon at the rate of —— per cent. per annum on a messuage and lands [*parcels*] situate in the parish of ——, in the county of ——, and particularly described in the principal indenture, WITNESSETH that in consideration of the sum of £—— now paid to the said [*mortgagor*] by the said [*mortgagee*], the receipt whereof is hereby acknowledged, &c. [*covenant for payment of principal and interest, and charge as in last precedent, substituting words* "principal indenture" *for* "within written indenture"].

Parties.

Testatum.

Covenant and charge.

IN WITNESS, &c.

XLVII. DEED *of* FURTHER CHARGE *on a* LIFE INTEREST *and* POLICY *of* INSURANCE. ASSIGNMENT *of a* FURTHER POLICY *of* INSURANCE *on the* LIFE *of the* MORTGAGOR.

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; AND supplemental to an indenture (hereinafter referred to as "the principal indenture"), dated the —— day of ——, 19—, and made between [*parties*], whereby the life estate or interest of the borrower of and in [*describe nature of property*], and a certain life policy and premises were assigned to the said [*original mortgagees*] by way of mortgage to secure the repayment of the sum of 1,500*l.* and interest thereon as therein mentioned; WHEREAS all the estate and interest of the said [*original mortgagees*] under the principal indenture is now vested in the

Parties.

Recitals: of change in title of mortgagees

(*m*) Stamp, *ad valorem* on amount of further charge. Stamp.

(*n*) Stamp, *ad valorem* on amount of further advance as a mortgage, and also on amount of original advance at the rate of 6*d.* per 100*l.* by reason of the additional security for the same. Stamp.

XLVII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

lenders; AND WHEREAS the sum of 1,500*l.* secured by the principal indenture is still owing, with interest thereon, from the —— day of —— now last past, but all interest thereon up to that date has been duly paid and satisfied; AND WHEREAS the lenders have agreed to lend to the borrower the further sum of 500*l.*, upon having the payment of the same with interest thereon at the rate of —— per cent. per annum secured, and the payment of the said sum of 1,500*l.* and interest further secured in manner hereinafter appearing; AND WHEREAS as part of the said intended security the borrower has effected a further insurance on his own life in the sum of £—— with the —— Life Assurance Society, by a policy numbered —— and dated the —— day of ——, 19—, and under the annual premium of £——: NOW THIS INDENTURE WITNESSETH as follows:—

of state of mortgage debt;

of agreement for further advance;

of further policy of life assurance.

Testatum.

Covenant for payment of original and further advances and interest.

1. In pursuance of the said agreement, and in consideration of the sum of 1,500*l.* now owing by the borrower upon the security of the principal indenture, and of the further sum of 500*l.* this day paid to the borrower by the lenders out of moneys belonging to them on a joint account (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders to pay to them on the —— day of —— next the sum of 2,000*l.*, with interest for the same, at the rate of —— per cent. per annum computed as to the sum of 1,500*l.*, part of the said sum of 2,000*l.*, as from the —— day of ——, 19—, and as to the sum of 500*l.*, the remainder of the said sum of 2,000*l.*, as from the date of these presents, and also so long as any principal money shall remain due upon the security of the principal indenture, or of these presents, to pay to the lenders interest thereon after the rate aforesaid respectively by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Second *testatum.*

Assignment of further policy (*o*).

2. In further pursuance of the said agreement, and for the consideration aforesaid, he the borrower hereby, as beneficial owner, assigns unto the lenders all the said further policy of assurance hereinbefore described, together with the sum of £—— thereby assured, and all other moneys assured or to become payable by virtue thereof, and the full benefit thereof, To HOLD the said policy and premises hereby assigned unto the lenders, subject to the proviso for redemption following.

Habendum.

(*o*) Notice of this assignment should be given to the insurance company.

XLVII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

3. PROVIDED ALWAYS, that if the borrower, his executors or administrators, shall, on the —— day of ——, pay to the lenders, their executors, administrators, or assigns, the said sum of 1,500*l.*, with interest thereon, from the —— day of ——, 19—, at the rate aforesaid; AND ALSO the sum of 500*l.* with interest thereon as from the date of these presents at the rate aforesaid, then the lenders, their executors, administrators, or assigns, will, at the request of the borrower, his executors, administrators, or assigns, re-assign the said further policy and premises hereinbefore expressed to be hereby assigned unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

Proviso for redemption.

4. IT IS HEREBY AGREED that all and singular the life estate or interest, policy, and premises comprised in and assured by the principal indenture; AND ALSO any new policy or policies which may be effected under the powers and provisions contained in the same indenture, shall stand charged with and remain a security for the payment to the lenders as well of the said sum of 1,500*l.* and the interest for the same, as of the said sum of 500*l.* and the interest for the same, pursuant to the covenant in that behalf herein contained, and to the provisions of the principal indenture as hereby altered, and shall not be redeemable until both the said principal sums of 1,500*l.* and 500*l.*, and the interest thereon respectively, shall be fully paid and satisfied; AND it is hereby also agreed, that all covenants, trusts, powers, and provisoes, in and by the principal indenture contained or implied by virtue of any statute or otherwise for securing the payment of the said sum of 1,500*l.* and the interest thereon, shall extend to and be applicable so as to be also a security for the said sum of 500*l.*, and the interest thereon, as if the said sum of 500*l.* had formed part of the principal money secured by the principal indenture: AND FURTHER, that all the covenants, trusts, powers, and provisions contained in the principal indenture and relating to the said policy of assurance thereby assigned, or any new or substituted policy or policies to be effected as therein mentioned, or the moneys to be received under or by virtue thereof respectively, shall extend and be applicable to the said further policy and premises hereinbefore expressed to be hereby assigned in the same manner in all respects as if such covenants, trusts, powers, and provisions contained in the same indenture were herein repeated with respect to such further policy, with such alterations only as

Charge on property comprised in original mortgage and substituted policies.

Powers, &c. of original mortgage to extend to further advance and to further policy of assurance.

XLVII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

are required by reason of the difference in the amounts assured and intended to be secured respectively.

IN WITNESS, &c.

XLVIII. DEED *of* FURTHER CHARGE *on* FREEHOLDS (*by* INDEPENDENT DEED) *where the* ORIGINAL ADVANCE *and* ARREARS *of* INTEREST *are* CONSOLIDATED *with the* FURTHER ADVANCE, *and the* RATE *of* INTEREST *and* HALF-YEARLY DAYS *of* PAYMENT *are* ALTERED. *A* MESNE INCUMBRANCER *joins for the purpose of* POSTPONING *his* SECURITY. MORTGAGE *of* ADDITIONAL FREEHOLDS *as a* FURTHER SECURITY *for the* ORIGINAL *and* FURTHER ADVANCES.

Parties.

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the first part; [*mesne incumbrancer*], of, &c., of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS, by an indenture of mortgage dated the —— day of ——, and made between the borrower, of the one part, and the lender, of the other part, in consideration of the sum of £—— [*original advance*] paid to the borrower by the lender, the borrower covenanted with the lender to pay to him, on the —— day of ——, the sum of £—— [*original advance*], with interest thereon in the meantime at the rate of 4 per cent. per annum, and also as long after that day as any principal money should remain due thereunder, to pay to him interest thereon at the same rate by equal half-yearly payments, on the first day of January and the first day of July in every year; AND by the indenture now in recital, certain freehold lands and hereditaments situate in the parish of ——, in the county of ——, and therein particularly described, were conveyed or assured unto and to the use of the lender, his heirs and assigns, subject to redemption of the same premises, on payment to the lender, his executors, administrators, or assigns, of the said sum of £—— [*original*

Recitals: of first mortgage:

Stamp

(*p*) Stamp, *ad valorem* on amount of arrears of interest and further advance as a mortgage, and on the amount of the original advance at the rate of 6*d.* per 100*l.* as an additional security for the same.

advance], with interest thereon at the rate aforesaid, on the said —— day of ——, 19—; AND by the indenture now in recital it was provided, &c. [*recite any special provisions as to insurance, &c.*]; AND WHEREAS, by an indenture dated the —— day of ——, 19—, and made between the borrower, of the one part, and the said [*mesne incumbrancer*], of the other part, the hereditaments comprised in the hereinbefore recited indenture of mortgage were conveyed or assured subject thereto unto and to the use of the said [*mesne incumbrancer*], his heirs and assigns, by way of mortgage, to secure the payment to the said [*mesne incumbrancer*], his executors, administrators, or assigns, of the sum of £——, with interest thereon as therein mentioned; AND WHEREAS the said sum of £——, with the sum of £—— for interest thereon, from the —— day of ——, 19—, is now due and owing on the security of the hereinbefore first recited indenture of mortgage; AND WHEREAS the lender has agreed to lend to the borrower the further sum of £——, upon the terms hereinafter appearing; AND WHEREAS upon the treaty for the said further advance, it was agreed that the said principal sum of £—— [*original advance*], and the said sum of £—— so owing for interest thereon as aforesaid, and also the said further sum of £—— [*further advance*], should be consolidated, and should henceforth bear interest at the rate hereinafter mentioned, and that the payment of the said aggregate sum of £——, with interest thereon, should be secured in manner hereinafter appearing; AND that the said [*mesne incumbrancer*] should join in these presents for the purpose of postponing the said principal sum of £—— and interest thereon secured by the hereinbefore recited indenture of the —— day of ——, 19— [*second mortgage*], and the securities for the same respectively, so far as relates to the said lands and hereditaments comprised in the hereinbefore recited indenture of the —— day of ——, 19— [*first mortgage*], to the principal moneys and interest intended to be hereby secured, and the security intended to be hereby effected: NOW THIS INDENTURE WITNESSETH as follows:—

XLVIII. FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS.

of second mortgage;

of state of mortgage debt;

of agreement for further advance;

of terms of further advance.

Testatum.

1. In pursuance of the said agreement, and in consideration of the said principal sum of £——, and the sum of £—— for interest thereon, now owing as aforesaid, and of the further sum of £—— now paid to the borrower by the lender (the receipt of which further sum of £——, making with the said sums of £—— and

Covenant for payment of aggregate principal sum and interest.

XLVIII. FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS.

£—— the aggregate sum of £——, the borrower hereby acknowledges), the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns, on the —— day of —— next, the sum of £—— [*the aggregate sum*], with interest thereon in the meantime at the rate of £—— per cent. per annum [*new rate*]; AND ALSO so long after that day as any principal money shall remain due under this security to pay to the lender, his executors, administrators, or assigns, interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Second *testatum*. Declaration as to equity of redemption.

2. In further pursuance of the said further agreement, and for the consideration aforesaid, it is hereby agreed and declared that the said lands and hereditaments comprised in and assured by the hereinbefore recited indenture of the —— day of ——, 19— [*first mortgage*], shall henceforth be freed and discharged from the equity of redemption therein subsisting under or by virtue of the same indenture, but shall be subject to the proviso for redemption hereinafter contained.

Third *testatum*. Conveyance of additional freeholds.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, hereby grants unto the lender ALL THAT, &c. [*parcels*], TO HOLD the same unto and to the use of the lender, his heirs and assigns, subject to the proviso for redemption following.

Proviso for redemption.

4. PROVIDED ALWAYS that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £—— [*the aggregate sum*] and interest thereon at the rate last aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey as well the hereditaments and premises comprised in and assured by the said indenture of the —— day of —— [*first mortgage*] as also the hereditaments and premises hereby assured to the use of the borrower, his heirs and assigns, or as he or they shall direct.

Powers, &c. of original mortgage to extend to aggregate amount secured.

5. IT IS HEREBY AGREED that all the covenants, trusts, powers, and provisoes in the said indenture of the —— day of ——, 19— [*the first mortgage*], contained or implied by statute or otherwise, for securing the payment of the said sum of £—— [*the original advance*] and the interest thereon, shall extend and be applicable so as to be a security for the said aggregate sum of £——, and

interest thereon at the rate of —— per cent. per annum [*new rate*], in the same manner in all respects as if such covenants, trusts, powers, and provisions were herein repeated, with such alterations only as are required, by reason of the difference in the principal amount secured and in the rate of interest hereby made payable, and in the days hereby appointed for payment thereof respectively.

Provisoes as to insurance, &c. of premises comprised in original mortgage to extend to additional freeholds.

6. It is hereby further agreed that all the covenants and provisions contained in the said indenture of the —— day of —— [*first mortgage*], with respect to the insurance of the premises therein comprised, and to the exercise of statutory powers of leasing or letting the same premises, shall extend and be applicable to the said lands and hereditaments hereby assured, in the same manner in all respects as if such covenants and provisions contained in the last mentioned indenture were herein repeated, except as is hereinafter provided, with such alterations only as are required as aforesaid.

Proviso as to amount insurable.

7. Provided always, that the buildings and insurable property situate and being upon or in the said lands and hereditaments hereby assured shall be kept insured against loss or damage by fire to the amount of £—— at least, such amount to be in addition to, and not in substitution for, the amount to be insured, as provided in the last mentioned indenture.

Mesne incumbrancer postpones his security.

8. Provided always, and the said [*mesne incumbrancer*], at the request of the borrower, hereby covenants with the lender that not only the said principal sum of £—— and interest thereon, secured by the hereinbefore recited indenture of the —— day of ——, 19— [*first mortgage*], but also the said sum of £—— so owing for interest thereon as aforesaid, and the said sum of £—— [*further advance*], making together the said aggregate sum of £——, with interest for the same at the rate of —— per cent. per annum [*new rate*], shall be charged upon the said lands and hereditaments comprised in and assured by the hereinbefore recited indenture of the —— day of ——, 19— [*first mortgage*], in priority to the said sum of £—— so owing to the said [*mesne incumbrancer*] on the security of the hereinbefore recited indenture of the —— day of ——, 19— [*second mortgage*], and all interest now or hereafter to accrue due for the same and every part thereof respectively.

9. [*Covenant against registration as in Precedent II.*, ante, *p.* 8.]

XLVIII. FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS.

10. [*Provision as to increment value and reversion duties on sale*, ante, *p.* 8.]

IN WITNESS, &c.

XLIX. DEED *of* FURTHER CHARGE *to a* BUILDING SOCIETY INCORPORATED *under the Building Societies Act*, 1874 (*by* INDORSEMENT).

Parties.

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (to whom the hereditaments within described have been assigned, and to whom the shares of the within named [*original mortgagor*] have been transferred) (hereinafter called "the borrower"), of the one part, and the within named society (hereinafter called "the society"), of the other part;

Recital of agreement for further advance.

WHEREAS the society have, on the request of the borrower, agreed to advance him the further sum of £——, in respect of his —— additional advanced shares therein for the term of —— years, and the borrower has agreed to pay a premium for such advance, which for the said term of —— years amounts to the sum of £——, and according to the rules and bye-laws of the society is to be added to and treated as part of the principal of such advance, and has also agreed to repay the said further advance and premium with interest by monthly instalments as hereinafter mentioned:

Testatum.

NOW THIS INDENTURE WITNESSETH that, in consideration of the premises and of the sum of £—— now paid to the borrower out of the funds of the society (being the full amount of his said —— additional advanced shares therein), as he hereby acknowledges; he the borrower hereby covenants with the society that he the borrower will, during the continuance of this security, duly and punctually pay to the society the additional monthly subscription of £—— on the first Monday in every calendar month, commencing with the month of —— next, until the whole of the additional sum of £—— (being the aggregate amount of the said further advance and premium), and interest from the day of the date hereof, shall be fully paid to the society, or discharged, and

Covenants by borrower to pay additional monthly subscriptions;

Stamp.

(*q*) Stamp, *ad valorem* on amount of further advance and premium. For a form of mortgage to a building society, see Precedent XXX., *ante*, p. 77. See the notes to that precedent.

will also from time to time duly and punctually pay to the society all fines and fees and other moneys payable by the borrower in respect of his additional advanced shares, in accordance with the rules and bye-laws of the society in that behalf, and as within stated; AND it is hereby agreed, and the borrower, as beneficial owner (*r*), doth hereby declare, that all and singular the hereditaments and premises within described shall, with their appurtenants, henceforth stand and be charged as a security to the society for the payment as well of the original advance of £—— and interest secured by the within written indenture, and of the fines and fees payable in respect thereof, as of the said sum of £—— with interest as aforesaid, and the fines and fees payable in respect thereof; AND that all the powers, provisoes, and agreements contained in the within written indenture for better securing the payment of the moneys, fines, and fees thereby secured or otherwise in respect thereof, shall extend and be applicable to secure the payment of the moneys, fines, and fees hereby covenanted to be paid in the same manner as if such powers, provisoes, and agreements were herein repeated with reference to all the moneys, fines, and fees secured by the within written indenture and these presents respectively.

XLIX. FURTHER CHARGE TO BUILDING SOCIETY.

that mortgaged premises shall be charged with repayment of further advance and premium.

IN WITNESS, &c.

L. DEED *of* STATUTORY RECONVEYANCE *of* MORTGAGE (*s*).

THIS INDENTURE (*t*), made by way of statutory reconveyance of mortgage, the —— day of ——, 19—, BETWEEN [*mortgagee*],

Parties.

(*r*) As to the implied covenants, see *ante*, p. 122, note (*l*).

(*s*) Where a legal security is redeemed by the mortgagor or by any other person claiming under him as a subsequent mortgagee or otherwise, the mortgagee must surrender or reconvey the property to the person redeeming, free from incumbrances by the mortgagee or any person claiming under him, and must deliver up all deeds and documents relating to the property; and, if required, verify such delivery by affidavit: *Weeks* v. *Stourton*, 11 Jur. N. S. 278. Where leaseholds are mortgaged by subdemise the Satisfied Terms Act, 1845, does not apply, and a surrender is necessary: see *Re Moore and Hulm's Contract*, [1912] 2 Ch. 105. Where

As to reconveyances generally.

(*t*) Stamp, *ad valorem* at the rate of 6*d.* per 100*l.* or part of 100*l.* "at any time secured by" the mortgage: Stamp Act, 1891, sched. *tit.* Mortgage, &c. (5).

Stamp.

L. STATUTORY RE-CONVEYANCE.

of, &c., of the one part, and [*mortgagor*], of, &c., of the other part: Supplemental to an indenture made by way of statutory transfer

a mortgage of an equitable estate, or of a term of years created out of a freehold estate, is redeemed, the mortgaged property will revert to the mortgagor without the necessity of a reconveyance; a mere indorsed receipt will, therefore, be sufficient in such cases; but a formal reconveyance is usually taken as evidencing the fact that the mortgage debt has been paid off, and also giving to the mortgagor the benefit of the mortgagee's covenant (either express, or implied by his conveying "as mortgagee") that he has not incumbered. The following is suggested as a form of receipt to be indorsed on or written below an equitable charge where no reconveyance is taken:—

Form of receipt.

"The within [*or*, above] mentioned [*mortgagee*] hereby acknowledges to have this day received the sum of £——, in full satisfaction of all principal money and interest secured by and all claims and demands under the within [*or*, above] written memorandum [*or*, indenture]. As WITNESS, &c."

A mere receipt, containing no words which amount to a *release*, appears to require only a receipt stamp: *Firth & Sons, Ltd.* v. *I. R. Commrs.*, [1904] 2 K. B. 205.

Copyholds.

Where the mortgaged property consists of copyholds, and the mortgagee has not actually been admitted, it will be sufficient to enter up satisfaction on the court rolls, for which purpose a warrant should be given to the steward of the manor. If the mortgagee has been admitted a surrender to the mortgagor will be necessary: see *post*, p. 137, note (*h*); and p. 138, note (*i*).

Building societies.

In the case of a mortgage to a building society no reconveyance is necessary, inasmuch as by sect. 42 of the Building Societies Act, 1874, a receipt in the following form, indorsed or annexed on the mortgage deed, is sufficient to vest the mortgaged property "in the person for the time being entitled to the equity of redemption."

Form of receipt.

"The —— Building Society hereby acknowledge to have received all moneys intended to be secured by the within [*or*, above] written deed.

"In witness whereof the seal of the society is hereunder affixed this —— day of ——, 19—, by order of the board of directors [*or*, committee of management] in the presence of

"——, Secretary or Manager.

"[*Other witnesses (if any) required by the rules of the society.*]"

of mortgage, dated the —— day of ——, 19—, and made between [*parties*]: WITNESSETH that in consideration (*u*) of all prin-

Testatum.

No stamp is required in the case of a building society's receipt: see sects. 41, 42 of the Act. Stamp.

As to the effect of such a receipt where there are subsequent incumbrances of the equity of redemption, see *Pease* v. *Jackson*, L. R. 3 Ch. 596; *Fourth City Mutual Benefit Building Society* v. *Williams*, 14 Ch. D. 140; *Sangster* v. *Cochrane*, L. R. 28 Ch. D. 298; *Crosbie Hill* v. *Sayer*, [1908] 1 Ch. 866.

Where a mortgagee of freeholds has died before reconveyance since the 31st December, 1881, the devolution of the mortgage estate and the power to dispose of the same is by sect. 30 of the Conveyancing Act, 1881, vested in "his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or him"; but this section does not apply to copyholds: see sect. 88 of the Copyhold Act, 1894. In the cases of deaths of mortgagees between the 7th of August, 1874, and the 31st of December, 1881, the law as to devolution of legal estates is still regulated by sect. 4 of the Vendor and Purchaser Act, 1874. Prior to that Act it was governed by the common law, and the heir-at-law was the person to reconvey the legal estate in the absence of a will containing a devise of mortgage estates. Who are proper persons to reconvey.

Where a mortgagee becomes lunatic the committee will reconvey as the "person appointed by the Court to convey" under an order to be obtained for that purpose: see sect. 135 (4) of the Lunacy Act, 1890; and see Rule 55 (b) under that Act, and Practice Note (1908), W. N. 75. Lunatic mortgagee.

Where a mortgage of a lunatic's estate is paid off, the property will not be ordered to be reconveyed to the lunatic, but the mortgage will be kept on foot by transferring it to the committee to be disposed of as the Court may direct: *Re Melly* (1883), W. N. p. 121; 49 L. T. 429; see *Re Leeming*, De G. F. & J. 43.

A mortgagor or subsequent mortgagee paying off the mortgage may now require the mortgagee to transfer instead of reconveying: see Conveyancing Act, 1881, s. 15, and Conveyancing Act, 1882, s. 12. As to the rights of mortgagors and subsequent incumbrancers under this section, see *Teevan* v. *Smith*, L. R. 20 Ch. D. 724; and *Alderson* v. *Elgey*, L. R. 26 Ch. D. 567; *Smithett* v. *Hesketh*, 44 Ch. D. 161. Transfer in lieu of reconveyance.

As to the power of a mortgagor to redeem one mortgage without re- Consolidation.

(*u*) If the mortgage was for a fixed sum this mode of stating the consideration will be sufficient, but if it was to secure further advances, or a balance of account current, it is better, having regard to the regulation as to stamp duty above referred to, that the amount actually repaid should be stated thus:— Statement of consideration.

"in consideration of the sum of £——, being all the principal moneys at any time secured by, and the interest due under the said indenture, &c."

L. STATUTORY RE-CONVEYANCE.

Reconveyance.

cipal money and interest due under that indenture having been paid, of which principal and interest the said [*mortgagee*] hereby acknowledges the receipt, the said [*mortgagee*], as mortgagee, hereby conveys to the said [*mortgagor*], all the lands and hereditaments now vested in the said [*mortgagee*], under the said indenture, To HOLD to and to the use of the said [*mortgagor*] in fee simple, discharged from all principal money and interest secured by, and from all claims and demands under the said indenture.

IN WITNESS, &c.

LI. RECONVEYANCE *of* FREEHOLD LANDS *by* DEED INDORSED *on the* MORTGAGE (*x*).

Parties.

Testatum.

THIS INDENTURE (*y*), made the —— day of ——, 19—, BETWEEN the within named [*mortgagee*], of the one part, and the within named [*mortgagor*], of the other part; WITNESSETH,

deeming other mortgages held by the mortgagee, see sect. 17 of the Conveyancing Act, 1881; *Hughes* v. *Britannia, &c. Society*, [1906] 2 Ch. 607; and see also Wolstenholme, 10th ed. pp. 70 *et seq.*

Costs.

The mortgagor must pay the expenses of and incident to the reconveyance, but the costs of obtaining a vesting order, if necessary, whether under the Lunacy Act, 1890, or the Trustee Act, 1893, are in the discretion of the Court: see Lunacy Act, 1890, s. 142, and Trustee Act, 1893, s. 38.

This precedent is adapted from the form given in Part III. of the third schedule to the C. Act, 1881, and should only be used where the mortgage was in the statutory form: see C. Act, 1881, s. 29; and C. Act, 1911, s. 15.

Form of reconveyance.

(*x*) If the mode of engrossment of the mortgage and other circumstances admit, it is advisable that a reconveyance should be by indorsement, so that the mortgage may bear upon it the evidence of the discharge of the mortgage debt. In the case of settled land the tenant for life should be a party to the reconveyance. If he pays off the mortgage out of his own moneys he is entitled to a charge on the inheritance (*Adams* v. *Angell*, L. R. 5 Ch. D. 634; *Gifford* v. *Fitzhardinge*, [1899] 2 Ch. 32); but in that case it would be better for him to take a transfer of the mortgage. As to keeping the mortgage on foot for the benefit of the owner of the equity of redemption, see *Thorne* v. *Cann*, [1895] A. C. 11; *Liquidation Estates Purchase Co.* v. *Willoughby*, [1898] A. C. 321; *Capital and Counties Bank* v. *Rhodes*, [1903] 1 Ch. 631; *Re Gibbon*, [1909] 1 Ch. 367. As to the form of reconveyance where the equity of redemption is incumbered, see *Teevan* v. *Smith*, 20 Ch. D. 724; *West London Commercial Bank* v. *Reliance, &c. Society*, 29 Ch. D. 954.

Stamp.

(*y*) Stamp, see *ante*, p. 131, note (*t*).

that in consideration of all principal money and interest due under the within written indenture having been paid (of which principal money and interest the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*] hereby, as mortgagee, grants and releases unto the said [*mortgagor*] and his heirs, ALL the lands and hereditaments comprised in the within written indenture; TO HOLD the same unto and to the use of the said [*mortgagor*], his heirs and assigns, free and discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

LI. RE-CONVEYANCE OF FREEHOLD LANDS.

Reconveyance.

IN WITNESS, &c.

LII. RE-ASSIGNMENT *of* LEASEHOLDS, MORTGAGED *by* ASSIGNMENT, *by* DEED SUPPLEMENTAL *to the* MORTGAGE (*z*).

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part; AND supplemental to an indenture of mortgage, dated the —— day of ——, 19—, and made between the said [*mortgagor*] of the one part, and the said [*mortgagee*], of the other part, for securing the sum of £——, and interest thereon as therein is mentioned; WITNESSETH, that in consideration of all principal money and interest secured by the principal indenture having been paid (of which principal money and interest the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*] hereby, as mortgagee, assigns and releases unto the said [*mortgagor*], ALL that, &c. [*short description of parcels*], and all other (if any) the lands and hereditaments comprised in the principal indenture; TO HOLD the same unto the said [*mortgagor*] for the residue now unexpired of the term of —— years therein granted by the indenture of lease recited in

Parties.

Testatum.

Reconveyance.

(*z*) This form may be adapted to a re-assignment of any property mortgaged by assignment, by altering the description of the parcels, *e.g.*, "the policy of assurance and all other the property described in the principal indenture."

The reference in the *habendum* to the term and lease will, of course, be omitted.

(*a*) Stamp, see *ante*, p. 131, note (*t*). Stamp.

LII. RE-ASSIGNMENT OF LEASEHOLDS.

the principal indenture; subject to the rents, covenants, and conditions thereby and therein reserved and contained, and, on the part of the lessee, to be paid, performed, and observed respectively (*b*); but free and discharged from all principal money and interest secured by, and from all claims and demands under, the principal indenture.

In witness, &c.

LIII. SURRENDER *of* Mortgage Term, *created by way of* Underlease, *on* Payment *of* Mortgage Debt (*c*).

Parties.

THIS INDENTURE (*d*), made the —— day of ——, 19—, Between [*mortgagee*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part;

Recital of mortgage;

Whereas, by an indenture, dated the —— day of ——, 19—, made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, the said [*mortgagor*] demised unto the said [*mortgagee*], his executors, administrators, and assigns, All that [*describe parcels*], with the appurtenances thereunto belonging; To hold the same for (*e*) the residue then unexpired of a term of ninety-nine years, created by an indenture of lease therein recited, dated the —— day of ——, and commencing from the date of the said indenture of lease, except the last day of the said term; subject to a proviso for redemption on payment by the said [*mortgagor*], his executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the principal sum of 1,000*l.* and interest, on a day long since past;

that money was not paid on the day appointed,

And whereas the sum of 400*l.*, part of the said principal sum of 1,000*l.*, has since been paid by

(*b*) The mortgagee should require proof that the rent has been paid and the lessee's covenants observed and performed up to the date of the re-assignment, before parting with his security.

(*c*) As to the necessity for a surrender in the case of a mortgage by sub-demise, see *Re Moore and Hulm's Contract*, [1912] 2 Ch. 105.

Stamp.

(*d*) Stamp, see *ante*, p. 131, note (*t*).

(*e*) If the term was originally created by a tenant in fee simple and it is intended that the term shall merge in the fee, say,

Variation where mortgage term was created immediately out of the fee.

"for the term of 500 years thence next ensuing; subject to a proviso for redemption, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*]," &c.

the said [*mortgagor*] to the said [*mortgagee*], as the said [*mortgagee*] hereby acknowledges; AND WHEREAS the principal sum of 600*l.* still remains owing to the said [*mortgagee*] on his said mortgage security, but all interest thereon has been fully discharged up to the date hereof, as the said [*mortgagee*] hereby acknowledges: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of 600*l.* now paid by the said [*mortgagor*] to the said [*mortgagee*], in full satisfaction of all moneys now owing under the hereinbefore recited indenture of mortgage (the receipt of which sum of 600*l.* the said [*mortgagee*] hereby acknowledges), the said [*mortgagee*] hereby, as mortgagee, surrenders and releases unto the said [*mortgagor*], ALL and singular the premises comprised in and demised by the hereinbefore recited indenture of mortgage, with the appurtenances thereunto belonging; to the intent that the residue now unexpired of the term granted by the hereinbefore recited indenture of mortgage, and all other the term and interest (if any) of the said [*mortgagee*] therein, may be merged in the immediate reversion (*f*) of the same premises.

IN WITNESS, &c.

LIII. SURRENDER OF UNDERLEASE TO MORTGAGOR.

but part has since been paid;

that remaining principal sum is still due.

Testatum.

Surrender to mortgagor.

LIV. WARRANT *to enter* SATISFACTION *of a* MORTGAGE *by* CONDITIONAL SURRENDER *of* COPYHOLDS.

Manor of ——
County of ——. } I [*mortgagee*], of, &c. (*g*), hereby acknowledge that I have received payment of all principal moneys and interest secured by a conditional surrender, dated the —— day of ——, 19—, and made by [*mortgagor*], of, &c., of certain copyhold or customary hereditaments (*h*), situate at ——,

(*f*) "freehold reversion and inheritance."

Variation.

(*g*) Stamp, see *ante*, p. 131, note (*t*).

Stamp.

(*h*) Where a copyhold estate has been surrendered to the mortgagee, the usual practice, when the mortgage is paid off, is to enter an acknowledgment of satisfaction on the court rolls, for which purpose a warrant in the above form should be given to the steward of the manor. If the mortgagee has been admitted under the conditional surrender (which, however, seldom happens), he must, provided the money has not been paid until after the surrender has become absolute, re-surrender to the mortgagor in the common form, in consideration of the payment of the

What is to be done where mortgages of copyhold are paid off.

LIV. WARRANT TO ENTER SATISFACTION OF A MORTGAGE.

and holden of the above manor; And I hereby authorise and direct the steward of the said manor to enter on the rolls thereof satisfaction of the said conditional surrender; And for entering such satisfaction these presents shall be his warrant and authority.

As witness, &c.

LV. RECONVEYANCE *of* Freeholds *by the* Executors *of a* Transferee *of a* Mortgage (*i*), *and* Deed *of* Further Charge (*by* Supplemental Deed).

Parties.

THIS INDENTURE (*j*), made the —— day of ——, 19—, Between [*executor*], of, &c., and [*executor*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part; And supplemental to the several indentures of mortgage, further charge and transfer of mortgage specified, with the dates thereof and parties thereto respectively in the schedule hereto; Whereas [*transferee*], named in the said indenture of transfer of mortgage, died on the —— day of ——, 19—, without having revoked or altered his will, dated the —— day of ——, 19—, whereby he appointed the said [*executors*] to be executors thereof, who duly proved the same

Recital of death of transferee and appointment of executors of his will.

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mortgage debt. Where there is simply a covenant to surrender, no instrument is necessary to discharge the lands from the equitable lien, and the mortgagor may be satisfied with having the deed re-delivered to him with a receipt indorsed on the deed of covenant for the conditional surrender, and this should not be dispensed with, whether the covenant was followed by a surrender and admittance or not.

Devolution of mortgage estates.

(*i*) On the death, after 1881, of a person in whom solely hereditaments are vested by way of mortgage, the same devolve by sect. 30 of the Conveyancing Act, 1881, to his personal representatives like a chattel real. By sect. 45 of the Copyhold Act, 1887, it was provided that sect. 30 of the C. A. 1881, should not apply to copyholds vested in the tenant on the rolls. Sect. 88 of the Copyhold Act, 1894 (which repealed sect. 45 of the Act of 1887), enacts that sect. 30 of the C. A. 1881, shall not apply to copyholds vested in the tenant on the rolls on trust or by way of mortgage. As to a sole mortgagee who died between 7th August, 1874, and 1st January, 1882, see V. & P. Act, 1874, s. 4.

Stamp.

(*j*) Stamp, see *ante*, p. 131, note (*t*).

LV. RECONVEYANCE BY EXECUTORS OF TRANSFEREE.

Testatum. Reconveyance.

on the —— day of ——, 19—, in the Principal Probate Registry: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid by the said [*mortgagor*] to the said [*executors*], in full satisfaction of all money secured by the said indentures of mortgage and further charge respectively (the receipt of which sum is hereby acknowledged), the said [*executors*], as personal representatives (*k*) of the said [*transferee*], hereby grant to the said [*mortgagor*], ALL the lands and hereditaments described in the said indenture of mortgage; TO HOLD the same unto and to the use of the said [*mortgagor*], his heirs and assigns, freed and discharged from all principal moneys and interest secured by and from all claims and demands under the said indentures of mortgage and further charge respectively.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

25th March, 1901.—Indenture of mortgage made between [*mortgagor*], of, &c., of the one part, and [*mortgagee*], of, &c., of the other part, to secure the payment on the 25th day of September, 1901, of the sum of 1,000*l.* and interest thereon, at —— per cent. per annum.

1st January, 1902.—Indenture of further charge, made between the same parties, to secure the payment on the —— day of ——, 1902, of the further sum of 500*l.* and interest thereon at the rate aforesaid.

5th September, 1904.—Indenture of transfer, made between the said [*mortgagee*], of the first part; the said [*mortgagor*], of the second part; and [*transferee*], of, &c., of the third part; WHEREBY the said sums of 1,000*l.* and 500*l.*, and the securities for the same respectively, were transferred to the said [*transferee*].

(*k*) As to implied covenant against incumbrances, see Conveyancing Act, 1881, s. 7 (1) (F).

LVI. STATUTORY TRANSFER OF MORTGAGE.

LVI. DEED *of* STATUTORY TRANSFER, MORTGAGOR *not* JOINING. *Conveyancing Act*, 1881, *Third Schedule, Part II.* [*Form* A.] (*l*).

Parties.

THIS INDENTURE (*m*), made by way of statutory transfer of mortgage the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*transferee*], of, &c., of the other part; Supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, 19—, and made between [*parties*]:

Effect of statutory transfer.

(*l*) As to the effect of a statutory transfer, see C. A. 1881, ss. 27, 28. The mortgagor's concurrence in a transfer of mortgage should always be obtained if possible, so as to prevent any questions arising as to the state of accounts and the existence of equities as between the mortgagor and mortgagee, or as to the mortgagor having received notice of the transfer, or as to the continuance to the transferee of the mortgagee's powers. Moreover, if the interest has been duly paid and no notice to pay off has been given, the costs of a transfer, without the concurrence of the mortgagor, cannot be added to the mortgagee's costs of the security: *Re Radcliff*, 22 Beav. 201. If the mortgagor is not a party to the transfer, the transferee should at once give him notice thereof.

Mortgagor's right to require transfer.

As to the mortgagor's right to require the mortgagee to transfer instead of reconveying, see sect. 15 of the Conveyancing Act, 1881, which was extended to subsequent incumbrancers by sect. 12 of the Conveyancing Act, 1882. Query, whether sect. 15 of the Act of 1881 applies to a building society's mortgage: *Re Rumney and Smith*, [1897] 2 Ch. 351. As to the rights of successive incumbrancers, see *Teevan* v. *Smith*, 20 Ch. D. 724. As to form and effect of statutory transfers, see the Conveyancing Act, 1881, s. 27. The forms which are contained in third schedule to that Act may be varied and added to as circumstances may require. The statutory transfer is only available to pass the legal estate when the mortgage is statutory: *Re Beachey*, [1904] 1 Ch. 67. As to the rights of a tenant for life where the equity of redemption is in settlement, see *Alderson* v. *Elgey*, 26 Ch. D. 567.

Stamp.

(*m*) Stamp, 6*d*. for every 100*l*. and fractional part of 100*l*. of the amount of the mortgage debt assigned, exclusive of interest which is not in arrear. If interest in arrear is assigned, *ad valorem* duty at the same rate must be paid on it, even if the consideration is less than the whole amount of principal and interest. Where the interest is capitalized, *ad valorem* duty as on a mortgage is payable on the amount of such interest. As to stamps on transfers of mortgage, see the Stamp Act, 1891, s. 87, and the schedule to that Act, *tit.* Mortgage, &c.; the Conveyancing Act, 1881, s. 27 (4); *Wale* v. *I. R. Commissioners*, L. R. 4 Ex. D. 270; *Humphreys* v. *I. R. Commissioners*, 81 L. T. 199; and Alpe on Stamp Duties, 12th ed. pp. 178, 182.

LVI. STATUTORY TRANSFER OF MORTGAGE.

WITNESSETH, that in consideration of the sum of £ — now paid to the said [*mortgagee*] by the said [*transferee*], being the aggregate amount of £—— mortgage money and £—— interest due in respect of the said mortgage (of which sum the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*], as mortgagee (*n*), hereby conveys and transfers to the said [*transferee*] the benefit of the said mortgage. *Testatum.* Transfer of mortgage.

In witness, &c.

LVII. DEED *of* Statutory Transfer, a Covenantor Joining [*Form* B.] (*o*).

THIS INDENTURE, made by way of statutory transfer of mortgage the —— day of ——, 19—, Between [*mortgagee*], of, &c., of the first part; [*mortgagor*], of, &c., of the second part; and [*transferee*], of, &c., of the third part: Supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, 19—, and made between [*parties*]: WITNESSETH that, in consideration of the sum of £—— now paid to the said [*mortgagee*] by the said [*transferee*], being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon (of which sum the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*], as mortgagee (*n*), with the concurrence of the said [*mortgagor*], who joins herein as covenantor (*p*), hereby conveys and transfers to the said [*transferee*] the benefit of the said mortgage. Parties. *Testatum.* Transfer of mortgage.

In witness, &c.

LVIII. STATUTORY Transfer *and* Statutory Mortgage Combined [*Form* C.].

THIS INDENTURE (*q*), made by way of statutory transfer of mortgage and statutory mortgage, the —— day of ——, 19—,

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(*n*) The words "as mortgagee" imply a covenant against incumbrances by the transferor, both as to the mortgage debt and as to the mortgaged property: see sect. 7 (F.) of the Conveyancing Act, 1881.

(*o*) As to stamp and other matters, see notes to last precedent.

(*p*) See Conveyancing Act, 1881, s. 27 (3); *Bolton* v. *Buckenham*, [1891] 1 Q. B. 278.

(*q*) Stamp, *ad valorem* at the rate of 6*d.* per 100*l.* or part of 100*l.* of Stamp.

LVIII. STATUTORY TRANSFER AND STATUTORY MORTGAGE COMBINED.

Parties.

Recitals: of state of mortgage debt; of title of mortgagor.

Testatum.

Transfer of mortgage debt.

Second *testatum.*

Transfer and mortgage of property.

BETWEEN [*mortgagee*], of, &c., of the first part; [*mortgagor*], of, &c., of the second part; and [*transferee*], of, &c., of the third part: Supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, and made between [*parties*]; WHEREAS the principal sum of £—— only remains due in respect of the said mortgage, as the mortgage money, and no interest is now due and payable thereon: AND WHEREAS the said [*mortgagor*] is seised in fee simple of the land comprised in the said mortgage, subject to that mortgage: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— now paid to the said [*mortgagee*] by the said [*transferee*], of which sum the said [*mortgagee*] hereby acknowledges the receipt, and the said [*mortgagor*] hereby acknowledges the payment and receipt as aforesaid [and also in consideration of the further sum of £—— now paid to the said [*mortgagor*] by the said [*transferee*], of which sum the said [*mortgagor*] hereby acknowledges the receipt], the said [*mortgagee*], as mortgagee (*r*), hereby conveys and transfers to the said [*transferee*] the benefit of the said mortgage: AND THIS INDENTURE ALSO WITNESSETH that for the same consideration the said [*mortgagee*], as mortgagee (*r*), and according to his estate, and by direction of the said [*mortgagor*], hereby conveys, and the said [*mortgagor*], as mortgagor and as beneficial owner (*r*), hereby conveys and confirms to the said [*transferee*] ALL THAT, &c. [*parcels*], TO HOLD to and to the use of the said [*transferee*] in fee simple for securing payment on the —— day of ——, 19—, of [the sums of £—— and £——, making together] the sum of £—— as the mortgage money with interest thereon, at the rate of —— per cent. per annum.

IN WITNESS, &c.

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the amount assigned (see *ante*, p. 140, note (*m*)), and at the rate of 2*s.* 6*d.* per 100*l.* or part of 100*l.* of the further advance.

(*r*) See *ante*, p. 141, note (*n*). If there is a further advance, or if the mortgagor is not the original mortgagor, the mortgagor should convey "as mortgagor" (though these words are not in the statutory form) to import the covenant for payment of principal and interest under sect. 26 (2) of the Conveyancing Act, 1881; and "as beneficial owner" to imply the covenants for title under sect. 7 (1) (C.) of the same Act.

LIX. TRANSFER *of* MORTGAGE *of* FREEHOLDS *by* INDORSEMENT, *the* MORTGAGOR *not being a* PARTY (*s*).

LIX. TRANSFER OF MORTGAGE OF FREEHOLDS.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN the within named [*mortgagee*] (hereinafter called "the mortgagee"), of the one part, and the within named [*transferee*] (hereinafter called "the transferee"), of the other part; WHEREAS the within mentioned sum of £——, with interest thereon from the —— day of ——, is now owing to the mortgagee on the security of the within written indenture, as the mortgagee hereby declares; AND WHEREAS the transferee has agreed to pay to the mortgagee the said sum of £—— and the sum of £——, being the amount of the interest so owing as aforesaid, making together the sum of £——, upon having such transfer as is hereinafter contained, of the said principal sum and interest and the securities for the same: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of state of mortgage debt;

of agreement for transfer.

Testatum.

1. In consideration of the sum of £—— now paid to the mortgagee by the transferee (the receipt whereof is hereby acknowledged), the mortgagee hereby, as mortgagee, assigns to the transferee ALL THAT the said principal sum of £—— secured by the within written indenture, and all interest due or to become due for the same, and the benefit of all securities for the same: TO HOLD unto the transferee absolutely.

Assignment of mortgage debt.

2. For the consideration aforesaid, the mortgagee hereby, as mortgagee (*u*), grants unto the transferee ALL and singular the hereditaments comprised in and expressed to be granted by the within written indenture, or which are now by any means vested in the mortgagee, subject to redemption by virtue of the within written indenture: TO HOLD the same unto and to the use of the transferee, his heirs and assigns, with the powers and subject to

Second *testatum.*

Conveyance of freeholds.

Habendum.

(*s*) As to the advisability of obtaining the concurrence of the mortgagor, see *ante*, p. 140, note (*l*). Notice of the transfer should be given to the mortgagor.

Non-concurrence of mortgagor.

(*t*) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of the amount transferred. See *ante*, p. 140, note (*m*), as to inclusion of interest in arrear.

Stamp.

(*u*) See *ante*, p. 141, note (*n*). For an express covenant that the mortgage debt is owing, see *ante*, p. 108.

LIX. TRANSFER OF MORTGAGE OF FREEHOLDS.

the equity of redemption to which the same premises are now subject under or by virtue of the within written indenture (*x*).

In witness, &c.

LX. TRANSFER *of* Mortgage *of* Copyholds *to which the* Mortgagee *has been* Admitted, *by* Indorsement *on the* Mortgage Deed (*y*), *the* Mortgagor *being a* Party.

Parties.

THIS INDENTURE (*z*), made the —— day of ——, 19—, Between the within named [*mortgagee*] (hereinafter called "the

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(*x*) A power of attorney is not now required if notice of the transfer is given to the mortgagor.

Form of transfer of mortgage of copyholds.

(*y*) As in the case of a mortgage of copyholds, so in the case of a transfer of such mortgage, the transaction can only be completely effected by means of two instruments, that is to say, a deed assigning the benefit of the covenants, &c. of the mortgage and a surrender to pass the estate to the transferee. The nature and form of the instruments required will depend upon the following considerations. If the copyholds have been surrendered by the mortgagor pursuant to his covenant, and the mortgagee has been actually admitted under the covenant, the deed of transfer will merely assign the mortgage debt and the mortgagee will at the same time surrender the copyholds to the transferee: see Precedent LXI., *post*, p. 146. Should it be inconvenient for the surrender to be made simultaneously with the execution of the deed, the latter should contain a covenant by the mortgagee to surrender. If the mortgagor concurs in the deed of transfer, as in the text, for the purpose of admitting the state of account, &c., his concurrence in the surrender will not be necessary.

If the mortgagor has surrendered the copyholds but the mortgagee has not been admitted, the deed of transfer will contain an assignment of the mortgage debt and also a covenant by the mortgagee for the surrender to the transferee of the copyholds, subject to the existing equity of redemption (see Precedent LXII., *post*, p. 147); the surrender in this case must be made by the mortgagor, and may be effected in either of the two following ways, viz., either by vacating the original surrender and taking a fresh surrender to the transferee, with a fresh proviso for the vacation thereof; or by taking a surrender from the mortgagor with the concurrence of the mortgagee. The latter mode of surrender (for a form of which see Precedent LXIII., *post*, p. 148) seems to be preferable, as it is on the face of it a transfer and will require to be stamped accord-

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(*z*) Stamp, *ad valorem* at the rate of 6*d.* per 100*l.* or fraction of 100*l.* of the amount transferred: see *ante*, p. 140, note (*m*).

LX. TRANSFER OF MORTGAGE OF COPYHOLDS WHEN MORTGAGEE HAS BEEN ADMITTED.

mortgagee"), of the first part, the within named [*mortgagor*] (hereinafter called "the borrower"), of the second part, and [*transferee*], of, &c. (hereinafter called "the transferee"), of the third part; WHEREAS, in pursuance of the covenant in that behalf contained in the within written indenture, the borrower duly surrendered the copyhold hereditaments thereby covenanted to be surrendered into the hands of the lord of the within mentioned manor, to the use of the mortgagee, his heirs and assigns, subject to a proviso for avoiding such surrender on payment to the mortgagee, his executors, administrators, or assigns, on the —— day of ——, 19—, of the within mentioned sum of £——, with interest thereon at the rate of —— per cent. per annum; AND WHEREAS the mortgagee was, on the —— day of ——, 19—, admitted to the said copyhold hereditaments under the said surrender; AND WHEREAS the said sum of £—— is now owing to the mortgagee, but all interest thereon has been paid up to the date of these presents, as the mortgagee hereby declares and the borrower hereby acknowledges; AND WHEREAS the transferee has agreed to pay to the mortgagee the said sum of £—— upon having (among other securities) such transfer as is hereinafter contained of the said principal sum and interest: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— now paid to the mortgagee by the transferee, at the request of the borrower (the receipt whereof is hereby acknowledged), the mortgagee, as mortgagee, hereby assigns to the transferee ALL THAT the principal sum of £—— secured by the within written indenture, and all interest to become due for the same and the benefit of all securities for the same, TO HOLD the same premises unto the transferee absolutely.

Recitals: of surrender;

of admission of mortgagee;

of state of mortgage debt.

Testatum. Assignment of mortgage debt.

IN WITNESS, &c.

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ingly, whereas a fresh surrender might, it is conceived, require to be stamped as a mortgage; and, moreover, the vacation of the original surrender would vest the estate in the mortgagor until execution of the fresh surrender, and so might let in any intermediate surrender made by him. If the mortgagee's security rests merely on the covenant to surrender, no surrender having been made, the deed of transfer will contain an assignment of the mortgage debt, and also an assignment of the benefit of the mortgagor's covenant to surrender the copyholds: see Precedent LXIV., *post*, p. 149. In this case the surrender to the transferee will be made simply by the mortgagor: see Precedent LXV., *post*, p. 153.

LXI. SURRENDER UPON TRANSFER OF MORTGAGE OF COPYHOLDS.

LXI. SURRENDER *upon* TRANSFER *of a* MORTGAGE *of* COPYHOLDS *to which the* MORTGAGEE *has been* ADMITTED (*a*).

Recitals: of surrender;

Manor of ——, } WHEREAS (*b*) [*mortgagor*], of, &c., did on
County of ——. } the —— day of ——, 19—, duly surrender into the hands of the lord of the said manor to the use of [*mortgagee*], of, &c., his heirs and assigns, ALL THOSE, &c. [*parcels*], subject to a proviso for avoiding such surrender on payment to the said [*mortgagee*], his executors, administrators, or assigns, of £——, with interest thereon at the rate of —— per cent. per annum, on the —— day of ——, 19—; AND WHEREAS the said [*mortgagee*] was, on the —— day of ——, duly admitted to the said hereditaments under the said surrender; AND WHEREAS the said [*mortgagee*] has agreed to transfer the said mortgage debt and the securities for the same to [*transferee*], of, &c.: NOW BE IT REMEMBERED that, on the —— day of ——, 19—, the said [*mortgagee*] came before [*steward*], gentleman, steward of the said manor, and, in consideration of the sum of £—— paid to him by the said [*transferee*] (the receipt whereof is hereby acknowledged), did, out of Court, surrender into the hands of the lord of the said manor, by the hands and acceptance of the said [*steward*] by the rod, according to the custom of the said manor, all the said hereditaments and premises, with the appurtenances, and all the estate and interest of the said [*mortgagee*] therein, To the use of the said [*transferee*], his heirs and assigns for him, To HOLD by copy of court roll, at the will of the lord, according to the custom of the said manor, at and under the rents, fines, suits, and services therefor due and of right accustomed, subject nevertheless to the equities now affecting the same by virtue of the said recited surrender, and of these presents.

of admittance;

of agreement for transfer (*c*).

(*a*) See *ante*, p. 144, note (*y*).

Stamp. (*b*) Stamp, *ad valorem* at rate of 6*d*. per 100*l*. or part of 100*l*. assigned.

(*c*) The state of the account between the mortgagor and mortgagee will have been recited in the deed of transfer of the mortgage debt.

LXII. TRANSFER *of* MORTGAGE *of* COPYHOLDS (*which have been* SURRENDERED, *but to which the* MORTGAGEE *has not been* ADMITTED) *by* SUPPLEMENTAL DEED, *the* MORTGAGOR *not being a* PARTY (*d*).

LXII. TRANSFER OF MORTGAGE OF SURRENDERED COPYHOLDS, MORTGAGEE NOT ADMITTED.

Parties.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the one part, and [*transferee*], of, &c. (hereinafter called "the transferee"), of the other part; AND supplemental to an indenture of mortgage (hereinafter referred to as "the principal indenture"), dated the —— day of ——, 19—, and made between [*mortgagor*], of the one part, and the mortgagee, of the other part, whereby the copyhold lands and hereditaments holden of the manor of ——, in the county of ——, and therein described, were covenanted to be surrendered or assured to the use of the mortgagee, his heirs and assigns, by way of mortgage, to secure to him, his executors, administrators, or assigns, the payment of a principal sum of £——, and interest thereon at the rate of —— per cent. per annum as therein is mentioned: WHEREAS, in pursuance of the covenant in that behalf contained in the principal indenture, the said [*mortgagor*] duly surrendered the said copyhold lands and premises into the hands of the lord of the said manor to the use of the mortgagee, his heirs and assigns, subject to a proviso for avoiding such surrender on payment to the mortgagee, his executors, administrators, or assigns, on the —— day of ——, 19—, of the said principal sum and interest thereon at the rate aforesaid; AND WHEREAS the said principal sum of £—— is now owing to the mortgagee on the security of the principal indenture as the mortgagee hereby declares: NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of surrender.

First *testatum*.

Assignment of mortgage debt.

1. In consideration, &c. [*assignment of mortgage debt,* ante, *p.* 143, *substituting* "the principal indenture" *for* "the within written indenture"].

Second *testatum*.

2. For the consideration aforesaid, the mortgagee hereby, as mortgagee (*f*), covenants with the transferee that he the mort-

(*d*) See *ante,* p. 144, note (*y*).

(*e*) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of the amount assigned.

(*f*) A covenant to surrender is a "conveyance" within sect. 7 (C.) of the Conveyancing Act, 1881: see sect. 2 (v.).

LXII. TRANSFER OF MORTGAGE OF SURRENDERED COPYHOLDS, MORTGAGEE NOT ADMITTED.

gagee will forthwith surrender or cause to be surrendered into the hands of the lord of the manor of ——, according to the custom thereof, ALL the said hereditaments and premises comprised in the principal indenture and the said surrender respectively, and all other hereditaments, if any, which are now vested in the mortgagee by virtue of the principal indenture to the use of the transferee, his heirs and assigns, according to the custom of the said manor by and under the accustomed rents, fines, suits, and services, with the powers and subject to the right or equity of redemption to which the same premises are now subject under or by virtue of the principal indenture and the said surrender made in pursuance thereof.

Covenant by mortgagee for surrender of copyholds.

Declaration of trust, &c.

3. AND the mortgagee hereby covenants with the transferee that until surrender the mortgagee, his heirs and assigns, will stand possessed of the said hereditaments and premises in trust for the transferee, his heirs and assigns, but subject to such equity of redemption as the same premises would have been subject to if surrendered.

IN WITNESS, &c.

LXIII. SURRENDER *upon* TRANSFER *of* MORTGAGE *of* COPYHOLDS, *which have been* SURRENDERED, *but to which the* MORTGAGEE *has not been* ADMITTED (*g*).

Recitals: of surrender; as to admittance; as to state of mortgage debt.

Manor of ——, County of ——. } WHEREAS (*h*) [*recite surrender* ut ante, *p.* 147]; AND WHEREAS the said [*mortgagee*] has not been admitted to the said hereditaments under the said surrender; AND WHEREAS the sum of £——, part of the said principal sum, has been paid to the said [*mortgagee*], but the sum of £——, the residue thereof, is still owing to the said [*mortgagee*], but all interest thereon has been paid up to this date, and the said [*mortgagee*] has agreed with the said [*transferee*] to transfer to him the said mortgage debt so owing as aforesaid, and the securities for the same: NOW BE IT REMEMBERED that, on the —— day of ——, 19—, the said [*mortgagor*] came before [*steward*], gentleman, steward of the said manor, and, in

Surrender.

(*g*) See *ante*, p. 144, note (*y*).

Stamp.

(*h*) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of the amount of the debt transferred: *ante*, p. 140, note (*m*).

consideration of the sum of £—— [*the amount still owing*] paid to the said [*mortgagee*] by the said [*transferee*], the receipt of which sum the said [*mortgagee*] hereby acknowledges, did, by the direction of the said [*mortgagee*], out of Court surrender, &c. [*continue as in Precedent LXI.*, ante, *p.* 146]. LXIII. SURRENDER ON TRANSFER, MORTGAGEE NOT ADMITTED.

LXIV. TRANSFER *of* MORTGAGE *of* FREEHOLDS, COPYHOLDS (*which have not been* SURRENDERED), *and* LEASEHOLDS, *the* MORTGAGOR *being a* PARTY, *and* RECEIVING *a* FURTHER ADVANCE.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the first part; [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*transferee*], of, &c. (hereinafter called "the transferee"), of the third part; AND supplemental to an indenture of mortgage (hereinafter called "the principal indenture"), dated the —— day of ——, 19—, and made between the borrower, of the one part, and the mortgagee, of the other part, whereby the freehold hereditaments described in the first schedule hereto were granted unto and to the use of the mortgagee, his heirs and assigns, subject to a proviso for redemption thereof on payment on the day therein mentioned of the sum of £——, with interest thereon as therein mentioned, and which indenture contained a covenant by the borrower for the surrender of the copyhold hereditaments described in the second schedule hereto, subject to a proviso for avoiding such surrender on payment of the said sum of £—— and interest as therein mentioned, and by the same indenture the leasehold hereditaments described in the third schedule hereto were assigned [demised] unto the mortgagee for the residue of a term of —— years granted by the indenture of lease dated the —— day of —— therein mentioned [less the last day of such term], subject to such proviso for redemption as aforesaid; WHEREAS no surrender was made of the copyhold hereditaments comprised in the principal indenture pursuant to Parties. Recitals: as to surrender;

(*i*) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of mortgage debt assigned and as a mortgage on amount of further advance: *ante*, pp. 140 and 141, notes (*m*) and (*q*).

LXIV. TRANSFER OF MORTGAGE OF FREEHOLDS. COPYHOLDS NOT SURRENDERED, AND LEASEHOLDS.

the covenant in that behalf contained in the same indenture; AND WHEREAS the said sum of £—— now remains owing on the security of the principal indenture, but all interest for the same has been paid up to the date of these presents; AND WHEREAS the transferee has agreed, at the request of the borrower, to pay to the mortgagee the sum of £——, and to lend to the borrower the further sum of £——, making together the aggregate sum of £——, upon having the said sum of £—— and interest secured by the principal indenture and the securities for the same assigned to him, and upon having the repayment of the said aggregate sum of £——, with interest thereon at the rate hereinafter mentioned, further secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

of state of mortgage debt;

of agreement for transfer and further advance.

Testatum.

Assignment of mortgage debt.

1. In pursuance of the said agreement, and in consideration of the sum of £—— [*original mortgage debt*] now paid to the mortgagee by the transferee at the request of the borrower (the receipt whereof is hereby acknowledged), and of the sum of £—— [*further advance*] now paid to the borrower by the transferee, the payment and receipt respectively of which sums of £—— and £——, making together the aggregate sum of £——, the borrower hereby acknowledges, the mortgagee, at the request of the borrower, hereby, as mortgagee, assigns unto the transferee, &c. [*assignment of mortgage debt*, ante, *p.* 143, *substituting* "the principal indenture" *for* "the within written indenture"].

Second *testatum.*

Covenant for payment.

2. For the considerations aforesaid, the mortgagor hereby covenants, &c. [*covenant for payment of aggregate principal sum and interest*, ante, *p.* 124, *substituting* "mortgagee" *for* "lenders"].

Third *testatum.*

Grant of freeholds.

3. For the consideration aforesaid, the mortgagee, at the request of the borrower, hereby, as mortgagee, grants, and the borrower hereby, as beneficial owner, grants and confirms unto the transferee, ALL and singular the freehold hereditaments described in the first schedule hereto, and all other (if any) the hereditaments and premises granted by the principal indenture, or which are now by any means vested in the mortgagee, subject to redemption by virtue thereof, TO HOLD the same unto and to the use of the transferee, his heirs and assigns, freed and discharged from all right or equity of redemption to which the same premises are now subject, under or by virtue of the principal indenture, but subject to the proviso for redemption hereinafter contained.

Fourth *testatum.*

4. For the considerations aforesaid, the borrower, as beneficial

LXIV. TRANSFER OF MORTGAGE OF FREEHOLDS, COPYHOLDS NOT SURRENDERED, AND LEASEHOLDS.

owner (*k*), hereby covenants with the transferee that he the borrower will forthwith, at his own cost, surrender or cause to be surrendered into the hands of the lord of the manor of ——, according to the custom thereof, all the copyhold hereditaments described in the second schedule hereto, and all other (if any) the copyhold and customary hereditaments covenanted to be surrendered by the principal indenture, to the use of the transferee, his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, free and discharged from all right or equity of redemption to which the same premises are now subject under or by virtue of the principal indenture, but subject to a condition for the avoidance of the surrender so to be made, corresponding to the proviso for redemption hereinafter contained.

Assignment of benefit of covenant to surrender copyholds.

Fifth *testatum*.

5. For the consideration aforesaid, the mortgagee, as mortgagee, at the request of the borrower, hereby assigns, and the borrower hereby, as beneficial owner, assigns and confirms unto the transferee, ALL and singular the leasehold hereditaments assigned [demised] by the principal indenture, and all other leasehold hereditaments which are now by any means vested in the mortgagee, subject to redemption by virtue of the principal indenture; TO HOLD the said leasehold premises unto the transferee for the residue now unexpired of the term of years therein granted by the said indenture of lease [except the last day thereof], free and discharged from all right or equity of redemption to which the same premises are now subject under or by virtue of the principal indenture, but subject to the proviso for redemption hereinafter contained.

Assignment of leaseholds.

Proviso for redemption.

6. PROVIDED ALWAYS, that if the borrower, his heirs, executors, administrators, or assigns, shall, on the —— day of ——, 19—, pay to the transferee, his executors, administrators, or assigns, the sum of £—— [*aggregate amount of original debt and further advance*], and interest thereon at the rate aforesaid, then the transferee, his executors, administrators, or assigns, will, at the cost of the borrower, his heirs or assigns, reconvey the said freehold premises hereby granted to the use of the borrower, his heirs and assigns, and re-assign the said leasehold premises hereby assigned

(*k*) See *ante*, p. 147, note (*f*).

LXIV. TRANSFER OF MORTGAGE OF FREEHOLDS, COPYHOLDS NOT SURRENDERED, AND LEASEHOLDS.

unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

As to reduction of interest on punctual payment (*l*).

7. It is hereby agreed that the proviso in the principal indenture contained for the reduction of the rate of interest on the said sum of £—— [*original debt*] thereby secured shall extend and be applicable to the principal moneys and interest hereby secured, as if such proviso were herein repeated with the substitution therein of the said sum of £—— [*the aggregate amount*] for the said sum of £—— [*original debt*] secured by the principal indenture.

Powers and provisions in original mortgage to extend to further advance.

8. It is hereby also agreed that all covenants, trusts, powers, and provisions in and by the principal indenture contained and implied by virtue of any statute, or otherwise, for securing the payment of the said sum of £—— [*original debt*], and the interest thereon shall extend to and be applicable so as to be also a security for the said sum of £—— [*further advance*], and the interest thereon as if the said sum of £—— [*further advance*] had formed part of the principal moneys secured by the principal indenture: [Except and provided nevertheless that the total amount of the insurance of buildings and insurable property against fire to be effected and kept on foot henceforth by the borrower, his heirs, executors, or administrators, shall be the sum of £——, instead of the sum of £——, as mentioned in the covenant in that behalf contained in the principal indenture].

Proviso as to insurance against fire.

In witness, &c.

The First Schedule above referred to.

(*Freeholds.*)

The Second Schedule above referred to.

(*Copyholds.*)

The Third Schedule above referred to.

(*Leaseholds.*)

(*l*) If the half-yearly days of payment of interest are changed a new proviso for reduction will be substituted for this clause: for such a proviso, see *ante*, p. 10.

LXV. CONDITIONAL SURRENDER

LXV. CONDITIONAL Surrender *of* Copyholds *by* Mortgagor *to a* Transferee *of a* Mortgage *where there has been no* Surrender *to the* Original Mortgagee.

LXV. CONDITIONAL SURRENDER TO TRANSFEREE WHERE NO SURRENDER TO MORTGAGEE.

Manor of ——, County of ——.) WHEREAS (*m*) by an indenture dated the —— day of ——, 19—, and made between [*mortgagor*], of, &c., one of the copyhold tenants of the said manor, of the one part, and [*mortgagee*] of, &c., of the other part, the said [*mortgagor*], in consideration of the sum of £—— paid to him by the said [*mortgagee*], covenanted that he would forthwith surrender into the hands of the lord of the said manor all those [*parcels*], to the use of the said [*mortgagee*], his heirs and assigns, subject to a proviso for avoiding such surrender on payment to the said [*mortgagee*], his executors, administrators, and assigns, of the sum of £——, with interest thereon at the rate of —— per cent. per annum on the —— day of ——, 19—; And whereas no surrender of the said copyhold hereditaments and premises has ever been made pursuant to the said covenant; And whereas the said sum of £—— is now owing to the said [*mortgagee*], but all interest thereon has been paid up to this date, and it has been agreed that the said mortgage debt or sum of £——, and the securities for the same, should be transferred to the said [*transferee*], and that the said [*transferee*] should lend to the said [*mortgagor*] the further sum of £——, and that the said [*mortgagor*] should surrender the said copyhold hereditaments and premises, in manner hereinafter appearing: NOW BE IT REMEMBERED, that on the —— day of ——, 19—, the said [*mortgagor*] came before [*steward*], gentleman, steward of the said manor, and in consideration of the premises, did, out of Court, surrender into the hands of the lord of the said manor by the hands and acceptance of the said [*steward*] by the rod, according to the custom of the said manor, All the said copyhold hereditaments and premises, with the appurtenances, to the use of the said [*transferee*], his heirs and assigns, for ever, To hold by copy of court roll at the will of the lord according to the custom

Recitals: of deed of covenant to surrender copyholds;

that no surrender has been made;

of state of mortgage debt and agreement for transfer, and further charge.

(*m*) Stamp, *ad valorem* at rate of 6*d*. per 100*l*. or part of 100*l*. of mortgage money, and if a further sum is advanced, *ad valorem* as a mortgage on such further advance. Stamp.

LXV. CONDITIONAL SURRENDER TO TRANSFEREE WHERE NO SURRENDER TO MORTGAGEE.

of the said manor, at and under the rents and services therefor due and of right accustomed; subject nevertheless to this condition, that if the said [*mortgagor*], his heirs, executors, or administrators, shall, on the —— day of ——, 19—, pay to the said [*transferee*] the sum of £—— (*n*), together with interest for the same in the meantime after the rate of —— per cent. per annum, then this surrender is to be void and of none effect.

LXVI. TRANSFER *of a* MORTGAGE *of a* REVERSIONARY INTEREST *in* PERSONALTY *and a* POLICY *of* INSURANCE *on the* LIFE *of the* MORTGAGOR, *where* INTEREST *in* ARREAR *is* CAPITALISED *and the* MORTGAGOR *receives a* FURTHER ADVANCE.

THIS INDENTURE (*o*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the first part; [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*transferee*], of, &c. (hereinafter called "the transferee"), of the third part; AND supplemental to an indenture of mortgage dated the —— day of ——, 19—, and made between the borrower, of the one part, and the mortgagee, of the other part, for securing the payment of a principal sum of £—— and interest thereon at the rate of —— per cent. per annum (which indenture is hereinafter called "the principal indenture"): WHEREAS the principal sum of £——, and also the sum of £—— for interest in arrear from the —— day of ——, 19—, making together the sum of £——, is now owing on the security of the principal indenture; AND WHEREAS the transferee has agreed, at the request of the borrower, to pay to the mortgagee the said sum of £—— [*aggregate amount of principal and interest*], and to lend to the borrower the further sum of £——, making together the aggregate sum of £—— upon having such transfers as are hereinafter contained of the said principal sum and interest secured by the principal indenture and of the securities for the same, and upon having the repayment of the

Parties.

Recitals: of state of mortgage debt;

of agreement for transfer and further advance.

(*n*) The original debt and the further advance.

(*o*) Stamp, *ad valorem* at the rate of 6*d*. per 100*l*. or part of 100*l*. of original mortgage debt, and also *ad valorem* as a mortgage on fresh advance and interest capitalized.

said aggregate sum of £—— further secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:— LXVI. TRANSFER OF MORTGAGE OF REVERSIONARY INTEREST IN PERSONALTY.

1. In pursuance of the said agreement, &c. [*in consideration of payment of original mortgage debt and interest to mortgagee and of further advance to borrower*, ante, *p.* 150; *assignment of original mortgage debt and interest*, ante, *p.* 143]. *Testatum.* Assignment of mortgage debt.

2. For the consideration aforesaid the borrower hereby covenants with the transferee to pay to him on the —— day of —— next the said sum of £—— [*aggregate amount of original debt, interest in arrear, and further advance*], with interest for the same at the rate of —— per cent. per annum, and also so long as any principal money shall remain due upon the security of the principal indenture or of these presents, to pay to him interest thereon after the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year. Second *testatum.* Covenant for payment of principal and interest.

3. For the consideration aforesaid, the mortgagee, as mortgagee, at the request of the borrower, hereby assigns, and the borrower, as beneficial owner, hereby assigns and confirms unto the transferee, ALL THAT part, share, or interest of him the borrower assigned by the principal indenture of and in the trust funds, stocks, funds, shares, and securities therein mentioned, and of and in the dividends, interest, and annual income thereof; AND ALSO all that the policy of assurance on the life of him the borrower, and moneys assured and assigned by the same indenture, and all other the premises therein comprised and thereby assigned: together with full benefit of all powers, remedies, and provisions by or in the principal indenture conferred or contained for the recovery or enforcing payment or delivery of and giving receipts and discharges for the said premises comprised in the principal indenture or any of them, or otherwise in relation thereto: To HOLD the premises hereby assigned unto the transferee free and discharged from all right or equity of redemption under or by virtue of the principal indenture, but subject to the proviso for redemption hereinafter contained. Third *testatum.* Assignment of reversionary interest; and policy of assurance.

4. [*Proviso for redemption*, ut ante, *p.* 128, *substituting* "transferee" *for* "lender."] Proviso for redemption.

5. [*Proviso that covenants, &c. of mortgage shall extend to further advance*, ante, *p.* 152.]

IN WITNESS, &c.

LXVII. TRANSFER ON APPOINTMENT OF NEW TRUSTEE.

LXVII. TRANSFER *of a* MORTGAGE *of* FREEHOLDS *upon the* APPOINTMENT *of a* NEW TRUSTEE, *the* TRUST *not being* DISCLOSED (*p*).

Parties.

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [*continuing trustee*], of, &c., of the one part, and [*new trustee*], of, &c., of the other part; AND supplemental to an indenture of mortgage (hereinafter called "the principal indenture"), dated the —— day of ——, 19—, and made between [*parties*] for securing the sum of £—— and interest thereon at the rate of —— per cent. per annum: WHEREAS the said [*original trustee*] died on the —— day of ——, 19—; AND WHEREAS the principal sum of £——, with interest thereon, from the —— day of —— last, is now owing on the security of the principal indenture; AND WHEREAS the said [*continuing trustee*] and [*new trustee*] have become jointly entitled in equity to the said principal sum of £—— and the interest now due and hereafter to become due thereon: NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of death of trustee; of state of mortgage debt; of title thereto.

First *testatum*. Assignment of mortgage debt.

1. In consideration of the premises the said [*continuing trustee*] hereby assigns to the said [*continuing trustee*] and [*new trustee*] ALL THAT the said principal sum of £—— secured by the principal indenture, and all interest due and to become due for the same, and the benefit of all securities for the same: TO HOLD unto the said [*continuing trustee*] and [*new trustee*] absolutely.

Second *testatum*. Grant of freeholds.

2. For the consideration aforesaid, the said [*continuing trustee*] hereby grants unto the said [*new trustee*] and his heirs [*parcels*]: TO HOLD the same unto the said [*new trustee*] to the use of the said [*continuing and new trustees*], their heirs and assigns, with the powers and subject to the equity of redemption to which the same premises are now subject under or by virtue of the principal indenture.

Declaration that money belongs to trustees on joint account.

3. The said [*continuing trustee*] and [*new trustee*] hereby declare that the moneys secured by the principal indenture and hereby transferred, belong to them on a joint account (*r*).

(*p*) As to costs of transfer where mortgagor does not concur, see *ante*, p. 140, note (*l*). Notice of transfer must be given to the mortgagor.

Stamp.

(*q*) Stamp, *ad valorem* at rate of 6*d*. per 100*l*. or part of 100*l*. up to 10*s*.: see Stamp Act, 1891, s. 62; and Finance Act, 1902, s. 9. No notice of a trust is to be implied by reason only of the transfer bearing a 10*s*. stamp: see C. A. 1911, s. 13.

(*r*) As to the effect of an advance on a joint account, see Conveyancing

LXVII. TRANSFER ON APPOINTMENT OF NEW TRUSTEE.

4. The said [*continuing trustee*] hereby covenants with the said [*new trustee*] that he the said [*continuing trustee*] has not done or knowingly permitted or been party or privy to any act, deed, matter, or thing whereby the premises hereby assigned and granted respectively, or any part thereof respectively, are, is or may be impeached, charged, incumbered, or in any way affected, or whereby the said [*continuing trustee*] is in anywise prevented from assuring the same premises, or any part thereof, in manner aforesaid.

Covenant against incumbrances (*s*).

LXVIII. CONVEYANCE *of* FREEHOLDS *by way of* COLLATERAL SECURITY *for a* MORTGAGE DEBT (*t*).

THIS INDENTURE (*u*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part: WHEREAS by an indenture of even date herewith, and made between the same persons as are parties to these presents, certain hereditaments situate in the parish of ——, in the county of ——, and therein particularly described, have been conveyed to the use of the lender, his heirs and assigns, by way of mortgage, to secure the payment, on the —— day of ——, 19—, to the lender, his executors, administrators, or assigns, of the sum of £——, with interest for the same at the rate of —— per cent. per annum; AND upon the treaty for the said mortgage it was agreed that such payment should be further secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of

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Act, 1881, s. 61. A joint account clause is not notice of a trust: see *Re Harman and Uxbridge Railway Company*, L. R. 24 Ch. D. at p. 726; distinguished in and from *Re Blaiberg and Abrahams*, [1899] 2 Ch. 340, in which case the trust was revealed. If the continuing trustee is a married woman, the deed does not require acknowledgment by her: see Married Women's Property Act, 1907, s. 1.

(*s*) As to the expedience of inserting an express covenant by the continuing trustee instead of relying on the statutory implied covenant, see Appointment of New Trustees, *ante*, Vol. I. p. 82, note (*b*).

(*t*) Where several estates are mortgaged to secure a single advance it is advisable to keep the titles distinct by having separate mortgages. Collateral securities.

(*u*) Stamp, 6*d*. for every 100*l*. and also for every fractional part of 100*l*. of the amount secured (see Stamp Act, 1891, sched. *tit*. Mortgage, &c. (2)), but not to exceed 10*s*.: see Revenue Act, 1903, s. 7. Stamp.

LXVIII. CONVEYANCE OF FREEHOLDS AS SECURITY FOR MORTGAGE DEBT.

the said sum of £—— now paid by the lender to the borrower, the receipt whereof is hereby acknowledged, the borrower, as beneficial owner, hereby grants unto the lender [*parcels*]: To HOLD the same unto and to the use of the lender, his heirs and assigns, subject to the proviso for redemption following.

2. PROVIDED that, &c. [*proviso for redemption*, ut ante, *p.* 7].

3. PROVIDED and it is hereby agreed that the restriction on the right of consolidating mortgage securities which is contained in sect. 17 of the Conveyancing Act, 1881, shall not apply to this security.

[*Add any provisions*, e.g., *covenants as to insurance* (*see* ante, *p.* 7) *or other matters which may be desired with respect to the property comprised in this mortgage.*]

IN WITNESS, &c.

LXIX. APPOINTMENT *of a* RECEIVER (*y*).

THIS INDENTURE (*z*), made the —— day of ——, 19—,

Parties. BETWEEN [*mortgagee*], of, &c. (hereinafter called "the lender"),

Appointment of receiver.

(*y*) It is in general convenient to make the appointment of a receiver by a separate instrument, in order that it may be placed in his custody and held by him as his authority, if it becomes necessary for him to act. An appointment of a receiver is, however, sometimes included in the mortgage deed: this precedent may be readily adapted to the case of such a mode of appointment. The advantage to the mortgagee of the appointment of a receiver is that it enables him to have the rents and profits applied in liquidation of the interest without placing himself in the position of a mortgagee in possession. The power to appoint a receiver conferred on mortgagees by Lord Cranworth's Act, ss. 11 and 17, still remains in force as to mortgages prior to 1882: see *Re Solomon and Meagher*, 40 Ch. D. 508. Sect. 19 (1) (iii.) of the Conveyancing Act, 1881, empowers mortgagees to appoint receivers, whose duties and powers are set out in sect. 24 of the Act, but this power cannot be exercised until the mortgagee "has become entitled to exercise the *power of sale conferred by this Act*," and accordingly does not apply except when the statutory power of sale is incorporated in the mortgage deed. Where the appointment is made at the time of the mortgage the old form must be used. A form of appointment under the statutory provisions is given in the next precedent. Where the statutory power applies, the provisions of the Act with regard to the appointment, powers, and duties of receivers seem to be adequate and satisfactory, and it has not been

Stamp.

(*z*) A deed stamp of 10*s.* will be required.

LXIX. APPOINTMENT OF RECEIVER UNDER POWER IN MORTGAGE.

of the first part; and [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*receiver*], of, &c. (hereinafter called "the receiver"), of the third part: WHEREAS by an indenture of mortgage, dated the —— day of ——, 19—, and made between the borrower, of the one part, and the lender, of the other part, in consideration of the sum of £—— then advanced by the lender to the borrower, the borrower conveyed the hereditaments and premises described in the schedule hereto unto and to the use of the lender, his heirs and assigns, subject to a proviso for redemption of the same premises on payment by the borrower, his heirs, executors, administrators, or assigns, unto the lender, his executors, administrators, or assigns, of the sum of £—— and interest at the rate of —— per cent. per annum, on the —— day of —— then next; AND the indenture now in recital contained a covenant by the borrower that [*state fully from the mortgage the covenant for payment of principal and interest, and any provisoes relating to the rate or mode of payment of interest, to the maintenance of the property*, e.g., *for reduction of interest, insurance against fire, keeping up policies of life assurance, &c.*]: AND WHEREAS upon the treaty for the said mortgage, it was agreed that the receiver should be appointed receiver of the rents and profits of the same premises in manner hereinafter expressed, and with and subject to the powers, covenants, and conditions hereinafter contained: NOW THIS INDENTURE WITNESSETH as follows:—

Recital of mortgage;

of agreement for appointment of a receiver.

Testatum.

1. In pursuance of the said agreement, and in consideration of the premises, the borrower, with the concurrence of the lender, hereby appoints the receiver to be receiver, agent, and attorney from time to time, in the name of the borrower, or otherwise to receive from the present and future tenants and occupiers of the several hereditaments and premises respectively mentioned in the schedule hereto (*a*), the rents and profits now due and hereafter

Mortgagor and mortgagee appoint receiver.

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thought necessary in the present collection of precedents to insert any provision in a mortgage deed empowering a mortgagee to appoint a receiver. As to the receiver's liability as agent, see *Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265. See, further, as to the appointment of receivers, K. & E. 10th ed. vol. ii. p. 81, note (*c*).

(*a*) It will generally be convenient that the particulars of the mortgaged premises should be set out in a schedule to the deed appointing the receiver, for his guidance and information.

LXIX. APPOINTMENT OF RECEIVER UNDER POWER IN MORTGAGE.

to become due, for or in respect of the same premises (*b*); and in default of payment thereof, to use all or any lawful remedies, and generally to do all such acts as shall be necessary or expedient for receiving and recovering the said rents and profits, as fully and effectually as the borrower could do; AND the borrower, with the concurrence of the lender, hereby directs the several tenants and occupiers aforesaid to pay unto the receiver, or any future receiver to be appointed as is hereinafter provided, all the rents and profits of the same premises, or any part thereof respectively, and hereby declares that the receipts of the receiver, or of any such future receiver as aforesaid, shall be effectual discharges for the same; AND the borrower, with the concurrence of the lender, authorises the receiver to make such allowances to and arrangements with the tenants and occupiers aforesaid as he shall think fit.

Rents, how to be applied;

2. IT IS HEREBY DECLARED AND AGREED that the said rents and profits, when so received, shall be applied and disposed of by the receiver, or any such future receiver as aforesaid, in manner following (that is to say), in the first place, in paying all taxes, rates, and outgoings, payable in respect of the same premises, which the tenants or occupiers thereof shall not be liable to pay, and all expenses of repairing (*c*) or insuring against loss or damage by fire any buildings or other property which he shall think proper to repair or insure; and in the next place, in retaining and satisfying all necessary and reasonable expenses attending the

Short form referring to the statute.

(*b*) If preferred, the following short form, referring to the statute, may be substituted for the remainder of the precedent from this point:—

"AND IT IS HEREBY AGREED that the receiver, or any new receiver to be appointed in his place may be removed, and a new receiver may from time to time be appointed by the lender, his executors, administrators, or assigns, by writing under his or their hand or hands, as and when he or they may think fit; and that all statutory powers of, and provisions relating to receivers appointed under the statutory power in that behalf shall, so far as may be, henceforth be exercisable by, and apply with respect to the receiver, and any new receiver to be appointed in his place." [*Proviso as to commission, &c.*, post, *p.* 163.]

(*c*) As to repairs by receiver not authorized by mortgagee, see *White* v. *Metcalf*, [1903] 2 Ch. 567.

collection, receipt, or getting in of the said rents and profits; and also a salary, after the rate of £—— per annum, for his own use (*d*); AND in the next place, in paying unto the lender, his executors, administrators, or assigns, the interest to accrue due in respect of the said sum of £——, or upon so much thereof as shall for the time being remain unpaid, by equal half-yearly payments, on the said —— day of —— and —— day of —— in every year, and in paying all principal moneys charged on the mortgaged premises and payable on demand, and the interest thereon [and in paying the premiums or other moneys payable for keeping on foot any policy or policies of assurance for the time being subject to the said mortgage], and the surplus of such rents and profits, if any, shall be paid by the receiver to the borrower, his heirs [*or*, executors, administrators] or assigns.

LXIX. APPOINTMENT OF RECEIVER UNDER POWER IN MORTGAGE.

3. The receiver hereby covenants with the lender, and also as a separate covenant with the borrower, that he the receiver will from time to time, so long as he shall be receiver for the purposes aforesaid, use his utmost endeavours to collect, receive, and get in the said rents and profits, and duly apply the same for the purposes and in manner hereinbefore mentioned.

Covenant by receiver.

4. The borrower hereby covenants with the lender that, in case the receiver, or any future receiver to be appointed as hereinafter mentioned, shall die, or become disqualified or unwilling or unable to act as such receiver, agent, or attorney as aforesaid, then, and so often as the same shall happen, the borrower, or his heirs, executors, administrators, or assigns, shall and will, within the space of one calendar month next thereafter, appoint and authorise, or join and concur with the lender, his heirs, executors, administrators, or assigns, in appointing, and in default thereof, that it shall be lawful for the lender, his executors, administrators, or assigns, without the concurrence of the borrower, his heirs, executors, or administrators, to appoint some other fit and proper person, to be approved of by the lender, his executors, administrators, or assigns, to be receiver, agent and attorney, in

Covenant by borrower in case of disqualification of receiver to appoint another;

and in default, that lender may appoint;

(*d*) *Or*, "And also such a salary at such rate not exceeding the rate of —— per cent. of the amount actually collected and got in by him, as he shall, in the opinion of the lender, his executors or assigns, be fairly entitled to for his time and trouble."

LXIX. APPOINTMENT OF RECEIVER UNDER POWER IN MORTGAGE.

the place of the receiver, agent, or attorney, so dying, or becoming unwilling or unable to act as aforesaid, for the purposes aforesaid; AND every such person to be so appointed shall be entitled to exercise all the powers and authorities hereinbefore given to the receiver: AND ALSO, that so long as any moneys shall remain owing on the security of the said indenture of mortgage, the borrower will not revoke or alter any of the powers and authorities hereby given, without the consent in writing of the lender, his executors, administrators, or assigns, first obtained for that purpose, nor do nor suffer any act or thing whereby such powers or authorities may become void or be prejudicially affected; and will not in anywise prevent or obstruct the receiver, or any such future receiver or receivers as aforesaid, in or from receiving or recovering the said rents and profits, or any part thereof.

not to revoke appointment without consent of lender.

Indemnity to lender in respect of acts or defaults of receiver (*e*).

5. IT IS HEREBY FURTHER DECLARED AND AGREED that the lender, his heirs, executors, administrators, or assigns, or any of them, shall not be answerable or accountable for any misapplication or loss of the said rents and profits, or any part thereof which may happen by or through any neglect, default, or breach of trust on the part of the receiver, or any future receiver to be appointed as aforesaid, but that all such misapplications and losses, if any, and also the salary of the receiver for the time being, shall be exclusively made good, borne, and paid respectively by the borrower, his heirs, executors, administrators, and assigns: PROVIDED nevertheless, and it is hereby further declared and agreed, that it shall not be lawful for the receiver, or any future receiver to be appointed as aforesaid, to act in the execution of his office of receiver, unless or until the power of sale applicable to the said indenture of mortgage shall have become exercisable; but no such tenant or tenants, occupier or occupiers as aforesaid, shall be bound to take notice of this present proviso (*f*).

Receiver not to act until default.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*e*) As to the importance of this clause, see *Re Vimbos, Ltd.*, [1900] 1 Ch. 470; *Robinson Printing Co., Ltd.* v. *Chic, Ltd.*, [1905] 2 Ch. 123; *Deyes* v. *Wood*, [1911] 1 K. B. 806.

Addition where mortgage is of undivided shares.

(*f*) Where the mortgage is of undivided shares or an undivided share, the following clause should be added:—

"AND IT IS HEREBY AGREED AND DECLARED that the powers conferred upon the receiver, or any future receiver to be appointed

LXX. APPOINTMENT *of a* RECEIVER *by a* MORTGAGEE *under the* STATUTORY POWER (*g*).

LXX. APPOINTMENT OF RECEIVER UNDER STATUTORY POWER.

THIS INDENTURE (*h*) [*or*, THIS AGREEMENT], made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*receiver*], of, &c., of the other part; WHEREAS [*recite mortgage*, ut ante, *p.* 159]; AND WHEREAS the sum of £——, being the interest on the said principal sum of £—— due under the said mortgage on the —— day of —— last, is now in arrear and unpaid; AND WHEREAS the said [*mortgagee*] is desirous of appointing the said [*receiver*] to be receiver of the income of the property comprised in the said mortgage: NOW THIS INDENTURE WITNESSETH [*or*, THESE PRESENTS WITNESS] that for effecting the said desire the said [*mortgagee*], in exercise of the power in that behalf conferred on him by the statute in that behalf, and of all other powers (if any) him hereunto enabling, hereby appoints the said [*receiver*] to be the receiver of the rents, profits, and income of the hereditaments and property comprised in the said mortgage, the particulars whereof are mentioned in the schedule hereto; AND it is hereby agreed that the said [*receiver*], as such receiver, shall be entitled to a commission at the rate of —— per cent. on the gross amount of all moneys received by him; AND the said [*mortgagee*] hereby directs the said [*receiver*] to keep the buildings and all other property of an insurable nature, being upon, on, or in the said mortgaged premises insured against loss or damage by fire in the —— Insurance Office.

Parties.

Recitals: of mortgage; of default giving rise to power; of desire to appoint receiver.

Testatum.

Appointment of receiver.

Proviso as to commission.

Direction as to insurance.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

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as aforesaid, may be exercised either in respect only of the moiety [*or*, 'shares'] hereby mortgaged of the said hereditaments and premises, or in conjunction with the owner or owners for the time being of or the person or persons for the time being having similar powers over the other moiety [*or*, 'shares'] of the premises in respect of the entirety thereof."

(*g*) See note (*y*) to Precedent LXIX., *ante*, p. 158.

(*h*) The appointment of a receiver under the statutory power may be by writing not under seal, but it is usually made by deed. If made by deed it will require a deed stamp of 10*s*., otherwise a 6*d*. stamp. Stamp.

LXXI. REDUCING RATE OF INTEREST ON A MORTGAGE DEBT.

LXXI. DEED Reducing *the* Rate *of* Interest *on a* Mortgage Debt, *to be* Indorsed *on the* Mortgage Deed.

Parties. Recital of state of mortgage debt. *Testatum.*

THIS INDENTURE (*i*), made the —— day of ——, 19—, Between the within named [*mortgagee*], of the one part, and the within named [*mortgagor*], of the other part; Whereas the within named principal sum of £—— is now owing on the security of the within written indenture, but all interest thereon has been paid up to the —— day of —— last past; And whereas it has been agreed that the rate of interest secured by the within written indenture shall henceforth be reducible in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall, on the —— day of —— next and thereafter, on every half-yearly day on which interest is made payable under the within written indenture, or within —— days after each of the said days respectively, pay to the said [*mortgagee*], his executors, administrators, or assigns, interest on the said principal sum, or on such part thereof as shall for the time being remain unpaid, at the rate of —— [*reduced rate*] per cent. per annum, then and in such case the said [*mortgagee*], his executors, administrators, and assigns, shall accept interest for the said principal sum, or for such part thereof as shall for the time being remain unpaid, at the rate of —— [*reduced rate*] per cent. per annum for every half-year for which such interest shall be paid to them within such —— days as aforesaid, but in all other respects the within written indenture shall remain unaffected by these presents.

In witness, &c.

LXXII. DEED *of* Declaration *of* Trust *by the* Transferee *of* Part *of the* Mortgage Debt *in favour of the* Original Mortgagee (*k*).

THIS INDENTURE (*l*), made the —— day of ——, 19—,

(*i*) Stamp, 10*s*.

(*k*) Where a transfer of part of the mortgage debt is made without the concurrence of the mortgagor and any subsequent incumbrancers, then

(*l*) Stamp, 10*s*.

LXXII. DECLARATION OF TRUST ON TRANSFER OF MORTGAGE.

BETWEEN [*transferee*], of, &c. (hereinafter called "the transferee"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the other part: WHEREAS [*recite mortgage*, ut ante, *p.* 159]: AND WHEREAS by an indenture of transfer dated, &c., and made between [*parties*] in consideration of the sum of £—— therein expressed to be paid by the transferee to the mortgagee, the mortgagee assigned the said sum of 1,000*l.* and the interest thereon to the transferee, and by the same indenture granted the hereditaments comprised in the said mortgage unto and to the use of the transferee, his heirs and assigns, subject to such equity of redemption as was subsisting under the said mortgage: AND WHEREAS the sum of 600*l.* only, part of the said sum of 1,000*l.* so expressed to be paid by the transferee as aforesaid was in fact paid by him, and the sum of 400*l.*, residue of the said sum of 1,000*l.*, together with interest on the said sum of 1,000*l.* from the —— day of —— last, being the last half-yearly day of payment of interest up to the date of the said indenture of transfer, is still the property and money of the mortgagee, and in consideration thereof the transferee has agreed to make and execute the declaration hereinafter contained: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of mortgage and transfer;

of state of account.

Testatum.

1. In consideration of the premises, and in pursuance of the said agreement, the transferee hereby declares that he the transferee, his executors and administrators, will henceforth stand and be possessed of and interested in the said sum of 1,000*l.* and interest, and the securities for the same, as to the sum of 600*l.*, part thereof, and the interest henceforth to accrue due on the said sum of 600*l.*: In trust for himself the transferee, his executors, administrators, and assigns, and as to the sum of 400*l.*, residue thereof, and the interest on the said sum of 1,000*l.* from the —— day of —— last up to the date hereof: and also the interest henceforth to accrue due on the said sum of 400*l.*: In trust for the mortgagee, his executors, administrators, and assigns, and upon further trust that until the said sum of 1,000*l.* and interest shall be paid and satisfied the mortgage securities hereinbefore

Declaration of trust.

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the original mortgagee and the transferee must both concur in any action for foreclosure, to prevent a multiplicity of actions. A sub-mortgage is therefore preferable to a transfer of part of the debt: see Precedent XXXVII., *ante*, p. 106.

LXXII. DECLARATION OF TRUST ON TRANSFER OF MORTGAGE.

mentioned shall be held by the transferee, his executors and administrators, as well for the purpose of securing the repayment of the said sum of 600*l.* and interest thereon to the transferee, his executors, administrators, and assigns, as of securing the repayment of the said sum of 400*l.* and interest as aforesaid to the mortgagee, his executors, administrators, and assigns.

Transferee's portion of the debt and interest to have priority to the mortgagee's portion.

2. It is hereby expressly agreed by and between the said parties hereto, that the said sum of 600*l.* and interest thereon as aforesaid shall have priority of charge and payment over the said sum of 400*l.* and interest thereon as aforesaid, and that he the transferee, his executors and administrators, shall by and out of any moneys that may come into his hands by virtue of the said mortgage securities (except the interest that has accrued due in respect of the said sum of 1,000*l.* from the —— day of —— last up to the date hereof, which is to be paid over to the mortgagee, his executors, administrators, or assigns, immediately the same is received) in the first place to retain and repay himself or themselves the said sum of 600*l.* and interest in preference to the mortgagee, his executors, administrators, and assigns, as to the said sum of 400*l.* and interest to accrue due thereon as aforesaid.

Rights and remedies under mortgage to be vested in the transferee.

3. The right of receiving and giving discharges for the purchase-money of any premises sold under the said mortgage, and also the right of enforcing by foreclosure or other proceedings, the payment of the said sum of 1,000*l.*, or any part thereof, and the interest for the same, and all other rights, remedies, and powers under the said mortgage, or in relation thereto, shall be solely vested in the transferee.

Transferee's discretion as to calling in mortgage, &c.

4. The mortgagee, his executors, administrators, or assigns, shall have no right to require the said mortgage to be called in, or otherwise to interfere as to the time or manner of realising the securities, or any of them, or getting in or receiving the mortgage money, all which matters shall be in the discretion of the transferee, his executors, administrators, or assigns.

Transferee not to be liable for involuntary losses.

5. The transferee, his executors, administrators, or assigns, shall not be liable for involuntary losses incurred in relation to the premises.

IN WITNESS, &c.

LXXIII. MEMORANDUM *of* TRANSFER *of an* EQUITABLE MORTGAGE *by* DEPOSIT *of* DEEDS, *by* INDORSEMENT *on* MEMORANDUM *of* DEPOSIT (*m*).

LXXIII. MEMORANDUM OF TRANSFER OF EQUITABLE MORTGAGE.

Assignment.

MEMORANDUM (*n*): I, the within named [*mortgagee*], in consideration of the sum of £—— now paid to me by [*transferee*], of, &c., hereby assign and transfer to him the said [*transferee*], the within mentioned sum of £——, with the interest due thereon as from the —— day of —— last past, and all interest henceforth to accrue due for the same: AND ALSO all the deeds and documents within mentioned or referred to in, and the full benefit of the within written agreement: AND I hereby agree, at the request and cost of the said [*transferee*], his executors, administrators, or assigns, to execute a legal transfer of the said sum of £—— and interest, and of all securities for the same, in such form, and to contain all such powers and provisions as the said [*transferee*], his executors, administrators, or assigns, shall reasonably require.

Undertaking to execute formal transfer.

AS WITNESS, &c.

LXXIV. AFFIDAVIT *on* REGISTRATION *of a* BILL *of* SALE (*o*).

In the High Court of Justice, 19—, No. .
—— Division.

I [*deponent*], of ——, make oath and say as follows:—

1. The paper writing hereto annexed and marked A. is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof as made and given and executed by [*grantor*].

(*m*) Notice of the transfer must be given to the debtor. As for the necessity that the transfer of a charge by deposit of deeds should be in writing, see *Re Richardson*, L. R. 30 Ch. D. 396.

(*n*) Stamp, *ad valorem* on amount secured at the rate of 6*d*. per 100*l*. Stamp.

(*o*) See Bills of Sale Act, 1878, s. 10 (2). In the case of an absolute bill of sale, the attesting witness must be a solicitor; and the following clauses would have to be added:—

6. "I am a solicitor of the Supreme Court, and reside at ——."

7. "Before the execution of the said bill of sale by the said [*grantor*], I fully explained to [*him*] the nature and effect thereof."

The affidavit must not be sworn before the solicitor of the grantee: *Baker* v. *Ambrose*, [1896] 2 Q. B. 372.

LXXIV. AFFIDAVIT ON REGISTRATION OF BILL OF SALE.

2. The said bill of sale was made and given by the said [*grantor*] on the —— day of ——, 19—.

3. I was present and saw the said [*grantor*] duly execute the said bill of sale on the said —— day of ——, 19—.

4. The said [*grantor*] resides at [*state residence at time of swearing the affidavit*], and is [*state occupation*] (*p*).

5. The name —— subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me, this deponent.

Sworn at ——, this —— day of ——, 19—,

Before me,

This affidavit is filed on behalf of ——.

LXXV. AGREEMENT *or* UNDERTAKING *by an* INTENDING MORTGAGOR *to pay* COSTS *whether the* MORTGAGE *is completed or not* (*q*).

To Messrs. [*intending mortgagee's solicitor*].

[*Address and date.*]

DEAR SIRS (*r*),

With reference to the proposed loan by your client, Mr. [*intending mortgagee*], to me of the sum of £——, at interest after the rate of —— per cent. per annum, on a mortgage of my freehold estate situate at ——, in the county of ——, I hereby undertake, on completion of the mortgage, or in case your client shall be advised that the security is unsatisfactory in respect of title, value, or otherwise, then on demand, at any time after the

(*p*) As to the importance of correctly describing the grantor's occupation, see *Downs* v. *Salmon*, L. R. 20 Q. B. D. 775; *Kemble* v. *Addison*, [1900] 1 Q. B. 430; but it seems that the true name of the grantor need not be stated: *Stokes* v. *Spencer*, [1900] 2 Q. B. 483.

(*q*) In the absence of special agreement the intending mortgagee has no claim for preliminary expenses: *Wilkinson* v. *Grant*, 18 C. B. 319; *Ex parte Firth*, L. R. 19 Ch. D. 419, at p. 427. As to what costs should be specially provided for, see *Re Blakesley and Beswick*, 32 Beav. 379. The mortgagee's costs of negotiating the loan and preparing the mortgage, if not deducted from the advance, become a simple contract debt and cannot be added to the security: *Wales* v. *Carr*, [1902] 1 Ch. 860.

(*r*) Stamp, 6*d*.

security shall have been finally declined in writing, to pay you all costs, charges, and expenses incurred or to be incurred in or about the negotiation of the loan, the preparation and execution of this agreement, the investigation of the title and valuation of the property, including surveyors' valuation fees, and the preparation and execution of the mortgage deed, and generally of and incident to the completion of the mortgage; And further to pay to your client, whether the mortgage shall be completed or not, interest at the rate aforesaid, as from the day when the sum of £—— shall be deposited in the bank of Messrs. —— ready to be advanced, until completion of the mortgage, or until the expiration of —— days after the security shall have been so finally declined as aforesaid; And in case the mortgage shall not be completed, then to pay to Mr. [*intending mortgagee*] the further sum of £—— by way of compensation for all expenses and losses incurred or to be incurred in raising, depositing, and re-investing the money.

LXXV. UNDERTAKING TO PAY COSTS.

I am, &c.,

[*Signature of intending mortgagor*].

MORTGAGES AS AFFECTED BY THE LAND TRANSFER ACTS.

PRELIMINARY NOTE.

See the notes on this subject in K. & E., 10th ed., Vol. 2, p. 301.

Registered dealings by way of mortgage of registered land are regulated by sects. 22 to 28 of the Land Transfer Act, 1875. The prescribed form of a registered charge under rule 158 of the Land Transfer Rules is Form 44 given in the First Schedule to those Rules, "with such alterations and additions, if any, as are necessary or desired and the Registrar allows": rule 97. Under sect. 22, the person in whose favour the charge is made is registered as proprietor of the charge, and a certificate of charge is delivered to him or deposited in the Registry: Land Transfer Act, 1897,

Registered dealings.

s. 8 (4) (i); and see Land Transfer Rules, 259, 259A, and 259B. In the absence of an entry negativing such implication, a covenant for payment of the principal and interest is implied by virtue of the charge: see sect. 23 of the Land Transfer Act, 1875; and also, in the case of leaseholds, a covenant to pay rent and perform covenants and indemnify the proprietor of the charge: sect. 24.

Rights of registered proprietor.

Subject to any entries to the contrary in the register, the registered proprietor of a charge has the following rights and remedies under the Act of 1875:—

(1) he may enter into possession subject to prior registered incumbrances and to liability as mortgagee in possession: sect. 25;

(2) he may enforce a foreclosure or sale in the same manner as a mortgagee: sect. 26; see Land Transfer Rules, 164;

(3) he may sell as if he were registered proprietor of the land: sect. 27;

(4) registered charges as between themselves rank according to priority of registration: sect. 28. As to the steps to be taken "in order to prevent a security for moneys presently raisable under a puisne charge gaining priority by earlier registration over a security for moneys raisable at a future time under a paramount charge," see Land Transfer Rules, 171.

Discharge of charges.

As to how a charge is to be wholly or partially discharged, see Land Transfer Act, 1875, s. 28, and Land Transfer Act, 1897, sched.; and in the case of a building society's charge, see Land Transfer Rules, 167.

Application of Conveyancing Act.

Sect. 9 (2) of the Land Transfer Act, 1897, applies sects. 19, 20, 21 (except sub-sects. 1 and 4), 22, 23, and 24 of the Conveyancing Act, 1881, to registered charges.

Registration of incumbrances prior to first registration.

As to registration of incumbrances created prior to first registration, see Land Transfer Rules, 175 to 177; and as to sub-charges, see Land Transfer Rules, 178 to 181.

Stamps.

Sect. 83 (7) of the Land Transfer Act, 1875, provides that previously to registering any disposition the Registrar shall ascertain that all such stamp duties as would be payable in the case of an unregistered disposition have been satisfied. Where the transaction has been already effected by an unregistered instrument, such instrument, and not the registered instrument, shall bear the stamp duty: Land Transfer Rule 123; see further as to stamping, Land Transfer Rules, 124 and 125.

As to registering restrictions on charging land, see Land Transfer Act, 1875, ss. 58 and 59, and Land Transfer Rule 240, and Form 64.

As to dealings off the register with registered land, see *Capital and Counties Bank, Limited* v. *Rhodes*, [1903] 1 Ch. 631.

PRECEDENTS.

I. REGISTERED CHARGE (*a*). [FORM 44.]

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District ——.
Parish ——.
Title No. ——.

—— of ——, 19—. In consideration of —— pounds (£——) (the receipt whereof is hereby acknowledged) (*b*), I [*mortgagor*], of, &c., as beneficial owner (*c*), hereby charge the land comprised in the title above referred to with the payment to [*mortgagee*], of, &c., on the —— day of ——, of the principal sum of £——, with interest at —— per cent. per annum, payable [half-yearly, quarterly], on the —— day of ——, &c., in every year.

Signed, sealed, and delivered by the said [*mortgagor*], in the presence of [*witness*], of, &c. } [*Signature of mortgagor.*] (Seal.)

(*a*) Stamp, if the only instrument of transfer (see Preliminary Note, p. 170), *ad valorem* as on a mortgage.

(*b*) The receipt clause is not in the prescribed form, but its insertion is useful.

(*c*) The words "as beneficial owner" are not in the prescribed form, but should be inserted in order to obtain the benefit of the implied covenants for title under the Conveyancing Act, 1881, s. 7, as modified by sect. 16 (3) of the L. T. Act, 1897: see Vol. I. p. 664, note (*a*). Where the address differs from that on the register, say,

"I [*mortgagor*], of, &c., formerly of, &c.,"

giving registered address.

II. OF FREEHOLD AND LEASEHOLD LAND.

II. REGISTERED Charge *of* Freehold *and* Leasehold Land, *with* Conveyance *of the* Land, *subject to* Redemption *by* Registered Proprietor (*d*).

Land Registry.

Land Transfer Acts, 1875 and 1897.

District ——.

Parish ——.

Title Nos. —— and ——.

Charge.

—— of ——, 19—. In consideration of —— pounds (£——) (the receipt whereof is hereby acknowledged), I [*mortgagor*], of, &c. (hereinafter called "the borrower"), as beneficial owner, hereby charge the lands comprised in the title first above referred to with the payment to [*mortgagee*], of, &c. (hereinafter called "the lender"), of the principal sum of £——, with interest at —— per cent. per annum, payable [half-yearly *or* quarterly] on the —— day of ——, &c., in every year; And the borrower hereby, as beneficial owner, grants unto the lender All the land comprised in the title first above referred to, To hold the same unto and to the use of the lender in fee simple, subject to the proviso for redemption hereinafter contained; And the borrower hereby, as beneficial owner, demises All the land comprised in the title secondly above referred to, To hold the same unto the lender for the residue of the term created by the registered lease, except the last day of such term, subject to the proviso for redemption hereinafter contained. Provided always, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the land hereby granted unto the borrower, his heirs and assigns, and surrender the land hereby demised unto the borrower, his executors, administrators, and assigns, or as he or they shall direct

Conveyance of freehold land.

Demise of leasehold land.

Proviso for redemption.

(*d*) Stamp, *ad valorem* as on a mortgage: see Preliminary Note, *ante*, p. 170. In ordinary cases a registered charge alone, without the subsequent conveyance and other provisions, will suffice; but where it is thought unsafe or inadvisable to rely solely on such a charge, this form or one of the subsequent precedents may be used, as the case may require.

[For the consideration aforesaid, the borrower hereby irrevocably appoints the lender and [*attorney*], of, &c., and [*attorney*], of, &c., jointly and every two and each of them severally the attorney and attorneys of the borrower in his name and on his behalf, to make all applications and do all acts and things necessary or expedient for the purpose of registering the lender as proprietor of the charge hereby created; AND it is hereby agreed and declared (1) that all costs, charges, and expenses incurred by the lender and the said [*attorney*] and [*attorney*], or any of them, in exercise of the foregoing powers, shall be deemed to be costs properly incurred by him or them; (2) that the lender, or his assigns, may at all times inspect the entries on the register of the titles above referred to; and (3) that the borrower will, if required by the lender or his assigns, procure the instrument of charge to be registered against the titles above referred to.]

Power of attorney (*e*).

Costs and expenses.

Lender to be at liberty to inspect register.

Registration of charge.

AND the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns, on the —— day of —— next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND ALSO so long after that day as any principal money shall remain due upon this security to pay to the lender, his executors, administrators, or assigns, interest thereon at the same rate by equal [half-yearly *or* quarterly] payments, on the —— day of ——, &c., in every year.

Covenant for payment of principal and interest (*e*).

AND the borrower hereby declares as follows:—

(1) That the borrower, his executors, administrators, and assigns, will hold the last day hereby reserved of the said term of —— years in trust for the lender, his executors, administrators, and assigns, subject to such equity of redemption as may be subsisting therein by virtue hereof.

Trust of nominal reversion.

(2) That it shall be lawful for the lender, his executors, administrators, and assigns, to appoint a new trustee or new trustees of such nominal reversion in the place of the borrower, or his assigns, or any person appointed under the foregoing power.

Power to appoint new trustees of nominal reversion.

(*e*) The power of attorney and the covenant for payment of principal and interest will not be required if the charge is to be registered immediately; but as the fee on registration is upon a scale (see L. T. Fee Order, 1903), if the amount of the loan is large and the loan is only for a short time, it may be expedient not to register the charge, in which case the land certificate should be deposited with the mortgagee, and a caution (L. T. A., 1875, s. 53) or notice of deposit (L. T. R. 243) should be lodged.

II. OF FREEHOLD AND LEASEHOLD LAND.

(3) That during the continuance of this security the lender shall be entitled to the custody of the land certificates relating to the lands comprised in the above mentioned titles respectively which have been delivered to him by the borrower.

Custody of land certificate.

[*Add, if required, covenants to insure and repair*, ante, *p.* 11. *Provision for reduction of interest, p.* 10. *Exclusion of sect.* 17 *of the Conveyancing Act*, 1881, *p.* 9. *Restriction of statutory leasing powers, p.* 9. *Payment of principal by instalments, p.* 19. *Postponement of calling in the mortgage, p.* 83. *Postponement of payment off*, ibid., *or other suitable provisions.*] (*ee*).

Signed, sealed, and delivered, &c. [*as in Precedent I., p.* 171]. } [*Signature of mortgagor.*] (Seal.)

III. MORTGAGE *of* REGISTERED LAND *by* REGISTERED CHARGE, *and* DEMISE *of* LAND *of which* NOTICE *is* REGISTERED (*f*).

[*Heading and formal charge as in Precedent I.*, ante, *p.* 171, *defining the mortgagor as* "the borrower," *and the mortgagee as* "the lender," *as in Precedent II.*]

Demise (*g*).

AND the borrower hereby, as beneficial owner, demises unto the lender ALL the land comprised in the title above mentioned,

(*ee*) As to inserting a provision as to increment value and reversion duties on sale, see *ante*, p. 8, note (*p*).

(*f*) Stamp, *ad valorem* as on a mortgage.

(*g*) A legal interest passes by the demise (see *Re Moore and Hulm*, [1912] 2 Ch. 105), and the mortgagee is protected against any dealing by the registered proprietor of the land or persons deriving title through him, except prior registered incumbrancers, by registration of notice of the lease under sect. 50 of the L. T. Act, 1875.

This form may be used for leaseholds, in which case the *habendum* will run as follows:—

"To HOLD the same unto the lender for the residue unexpired of the term created by the registered lease, except the last day thereof."

and the proviso for redemption will require the borrower to—

"surrender the land hereby demised unto the lender, his executors, administrators, or assigns, or as he or they shall direct."

As to the application for registration of the notice of the lease or sublease, see L. T. R. 201 to 206.

This form of mortgage makes it unnecessary to include a declaration of

III. OF REGISTERED LAND BY REGISTERED CHARGE.

To HOLD the same unto the lender for the term of 500 years from the date of this charge, subject to the proviso for redemption following: PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the land hereby granted unto the borrower, his heirs and assigns, or as he or they shall direct, and deliver to him or them an instrument of discharge and an application to cancel any registered notice of the lease.

Proviso for redemption.

[*Add any mortgage stipulations that may be required.*] (*gg*).

Signed, &c.

IV. MORTGAGE *to* SECURE PART *of* PURCHASE-MONEY *by* PURCHASER *of* UNREGISTERED LAND *in* COMPULSORY DISTRICT, *effected by* ASSURANCE *off the* REGISTER, *to be followed by* REGISTERED CHARGE *and a* DEED *of* CONFIRMATION *after the* PURCHASER *has been* REGISTERED *as* PROPRIETOR.

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN [*purchaser*], of, &c. (hereinafter called "the borrower"), of the one part, and [*vendor*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS, by an indenture of even date with, but executed before these presents, and made between the lender, of the one part, and the borrower, of the other part, the freehold hereditaments hereby assured were granted by the lender to the use of the borrower, his heirs and assigns; AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing; AND WHEREAS the said hereditaments are situate within

Parties.

Recitals:

of conveyance by mortgagee to mortgagor;

of agreement for loans;

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trust on the reversion, or to enter any restriction against the title on the register, or to deposit the land certificate with the mortgagee. Under the powers conferred by the charge the mortgagee can sell the fee, or if the land is leasehold, the whole term of the lease.

(*gg*) See *ante*, p. 174, note (*ee*).

(*h*) Stamp, *ad valorem* as on a mortgage.

IV. TO SECURE PART OF PURCHASE-MONEY.

the district of ——, in the county of London; And whereas upon the application of the borrower, made with the consent of the lender, the Registrar of the Office of Land Registry has settled the form of entry of the borrower as proprietor of the said hereditaments, under the heading District ——, Parish ——, No. ——, under which title it is intended that the borrower shall be forthwith registered as proprietor thereof, with a —— title (*i*), under the Land Transfer Acts, 1875 and 1897; And whereas an instrument of charge, ready for registration under the said Acts, and intended to be of even date with but to be executed after these presents, has been prepared whereby the borrower is to charge the said hereditaments with the payment to the lender of the said sum of £—— and interest in accordance with the covenant in that behalf hereinafter contained; And whereas it is intended that the lender shall forthwith be registered as the proprietor of the said charge. NOW THIS INDENTURE WITNESSETH as follows:—

of intended first registration;

of intended charge under L. T. Acts.

Covenant for payment of principal and interest.

1. In consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, his executors, administrators, or assigns [*continue as in covenant for payment in Precedent II.*, ante, *p.* 173].

Grant of freeholds.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby grants unto the lender All that piece or parcel of land, &c. [*describe parcels*], To hold unto and to the use of the lender, his heirs and assigns, subject to the proviso for redemption following:—

3. [*Proviso for redemption as in Precedent III.*, ante, *p.* 175, *omitting the last words*, "and an application," *&c.*]

Power of attorney.

4. For the consideration aforesaid [*insert power of attorney*, "for the purpose of registering the borrower as such proprietor as aforesaid, and of the lender as proprietor of the charge so intended to be created as aforesaid," *and add agreement as to costs, inspection of entries, &c., as in Precedent II.*, ante, *p.* 173].

[*Add any further mortgage provisions or stipulations which may be required.*] (*ii*).

In witness, &c.

(*i*) State whether "absolute," or "possessory," or "qualified."

(*ii*) See *ante*, p. 174, note (*ee*).

V. MORTGAGE *in* Fee Simple *of* Registered Land *to* Secure Part *of* Purchase-money—*effected off the* Register—*supported by* Registered Charge, *and confirmed by* Deed *after* Registration *of* Purchaser *as* Proprietor.

THIS INDENTURE (*k*), made the —— day of ——, 19—, Between [*purchaser*], of, &c. (hereinafter called "the borrower"), of the one part, and [*vendor*], of, &c. (hereinafter called "the lender"), of the other part: Whereas the lender is registered as proprietor with a [possessory] title under the Land Transfer Acts, 1875 and 1897, of the hereditaments hereby assured under the heading District ——, Parish ——, No. ——; And whereas by an instrument of transfer, ready for registration under the said Acts, of even date with but executed before these presents, in consideration of £—— the lender has transferred the said hereditaments to the borrower in fee simple; And whereas the lender has agreed to lend to the borrower the sum of £—— upon having the repayment thereof with interest at the rate of —— per cent. per annum secured in manner hereinafter appearing; And whereas it is intended that by an instrument of charge under the said Acts ready for registration, and intended to be of even date with but to be executed immediately after these presents, the borrower shall charge the said hereditaments with the payment to the lender of the said sum of £——, and interest in accordance with the covenant in that behalf hereinafter contained; And whereas it is intended that the borrower shall forthwith be registered as proprietor of the said hereditaments, and that the lender shall forthwith be registered as the proprietor of the said charge.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant for payment.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*continue covenant for payment of principal and interest, as in Precedent II.*, ante, *p.* 173].

Grant.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, hereby

(*k*) Stamp, *ad valorem*, as a mortgage, on the amount of the loan.

V. OF REGISTERED LAND.

grants unto the lender, ALL the hereditament comprised in the title No. —— above referred to, TO HOLD the same unto and to the use of the lender in fee simple, subject to the proviso for redemption following.

Proviso for redemption.

3. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, and interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey the mortgaged hereditaments to him or them, or as he or they shall direct, and sign and deliver to him or them an instrument of discharge of any charge, and an application to withdraw any restriction entered on the register pursuant to the covenants by the borrower hereinafter contained.

Power of attorney.

4. AND the borrower hereby irrevocably appoints the lender and [*attorney*], of, &c., and [*attorney*], of, &c., jointly, and every two and each of them severally, the attorney and attorneys of the borrower in his name and on his behalf (1) to make all applications and do all acts and things necessary or expedient for the purpose of registering the borrower as proprietor of the said hereditaments, and the lender as proprietor of the said charge, and for entering on the register such a restriction as is hereinafter mentioned; (2) to sign, seal, and deliver such conveyance of the legal estate in the said hereditaments as is hereinafter referred to, and any other document which the lender may reasonably require for the purposes aforesaid, or any of them.

Costs and expenses.

5. IT IS HEREBY AGREED that all costs, charges, and expenses incurred by the lender and the said [*attorney*] and [*attorney*], or any of them, in exercise of the foregoing power shall be deemed to be costs properly incurred.

Covenant by borrower to register as proprietor, &c.

6. The borrower hereby covenants and agrees with the lender as follows:—

(1) That he the borrower will forthwith procure himself to be registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the said hereditaments.

(2) That he the borrower will forthwith procure the said instrument of charge to be registered under the said Acts, and deliver the certificate of charge to the lender.

(3) That as soon as he shall be registered as such proprietor as

aforesaid, he the borrower will apply for a restriction in the form set forth in the schedule hereto, or as near thereto as circumstances will admit, and will by an indenture already engrossed convey the legal estate in the said hereditaments to the lender in fee simple, subject to a right of redemption corresponding to the right of redemption under these presents. V. OF REGISTERED LAND.

(4) That these presents, the said registered charge, and such indenture, as in the last preceding sub-clause mentioned, shall form one entire security and be subject to the covenants and provisions herein contained.

In witness, &c.

The Schedule above referred to.

"Except under an order of the Registrar no transfer by the proprietor of the land, or made in exercise of the power of sale in any charge subsequent to the charge dated the —— day of ——, is to be registered without the consent of the proprietor of the said charge." Form of restriction (*l*).

VI. DEED *of* Confirmation *of* Mortgage *of* Registered Land *to be* Executed *upon the* Registration *of the* Mortgagor. Variations *where* Land Unregistered *in* Compulsory District (*m*).

THIS INDENTURE, made the —— day of ——, 19—, Between [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, and intended to be supplemental to an indenture (hereinafter called "the principal indenture"), whereby certain hereditaments [registered under the Land Transfer Acts, 1875 and 1897, under the heading District ——, Parish ——, No. ——] (*n*), were granted [*in the case of leaseholds, say* "assigned" *or* "demised," *as the case may be*] by the borrower to the lender in fee simple [*or*, "for the residue Parties. Recitals of grant [*or*, assignment, *or*, demise];

(*l*) See L. T. A. 1875, ss. 58 and 59; and L. T. R. 240.

(*m*) Stamp, 10*s*.

(*n*) Where the land is unregistered, for the words in brackets substitute the words "therein described."

VI. OF CONFIRMATION OF MORTGAGE OF REGISTERED LAND.

of registration of borrower, proprietor, &c.

then unexpired of the term of —— years granted by the registered lease referred to in the said title [except the last day thereof]] to secure the repayment to the lender of the principal sum of £—— and interest as therein mentioned; AND WHEREAS the borrower was, on the —— day of ——, registered as proprietor with a —— title of the hereditaments by the principal indenture mortgaged (*o*), and has caused the lender to be registered as proprietor of a charge on the said hereditaments for securing payment to the lender on the —— day of —— of the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, payable half-yearly on the —— day of —— and the —— day of —— in every year.

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance by way of collateral security.

1. In pursuance of the covenant in that behalf in the principal indenture contained, and in consideration of the premises, and by way of collateral security for the payment of the said principal sum of £—— and interest, the borrower, as beneficial owner, hereby grants [assigns *or* demises] and confirms unto the lender, ALL the hereditaments comprised in the title above referred to, TO HOLD the same unto and to the use of the lender, his heirs and assigns [*or*, "TO HOLD the same unto the lender for the residue of the said term of —— years [less the last day thereof]"], subject to the proviso for redemption following.

2. PROVIDED ALWAYS, that if, &c. [*continue proviso for redemption as in the principal indenture*].

3. IT IS HEREBY AGREED that the security made by this indenture and the principal indenture and the said registered charge [and the deposit of the land certificate] shall constitute one entire security, and be subject to the covenants and agreements in the principal indenture still remaining to be performed.

IN WITNESS, &c.

(*o*) Where the land was previously unregistered, say, "Under the Land Transfer Acts, 1875 and 1897, under the heading District ——, Parish ——, No. ——."

VII. MORTGAGE *of* UNREGISTERED LAND *in* COMPULSORY DISTRICT *to* SECURE PART *of* PURCHASE-MONEY—*by* ASSURANCE *off the* REGISTER—*where* MORTGAGEE *is to be* REGISTERED *as* FIRST PROPRIETOR (*p*). VII. OF UNREGISTERED LAND.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS by an indenture of even date with but executed before these presents, and made between the lender, of the one part, and the borrower, of the other part, the hereditaments hereby assured were granted unto and to the use of the borrower, his heirs and assigns; AND WHEREAS the said hereditaments are situate within the district of ——, in the county of London; AND WHEREAS the lender has agreed to lend the borrower the sum of £—— upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing; AND WHEREAS the Registrar of the Office of Land Registry, upon the application of the borrower, with the consent of the lender, has settled a form of entry of the lender as proprietor of the said hereditaments under the heading District ——, Parish ——, No. ——.

Recital of conveyance; of agreement for loan.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*continue covenant for payment of principal and interest as in Precedent II.*, ante, *p.* 173].

Covenant for payment of principal and interest.

2. The borrower hereby charges the said hereditaments with the payment to the lender of the said sum of £——, and interest thereon according to the covenants in that behalf hereinbefore contained, and so that the same shall not be redeemable until payment thereof accordingly.

Charge.

3. IT IS HEREBY AGREED AND DECLARED as follows:—

(1) The borrower will forthwith, at his own cost, cause the lender to be registered as proprietor under the Land Transfer Acts, 1875 and 1897, of the said hereditaments.

Lender to be registered as proprietor.

(*p*) Stamp, *ad valorem* as a mortgage. The mortgagor will lodge a caution with the registrar to protect himself: see L. T. A. 1875, s. 53.

VII. OF UNREGISTERED LAND.

Proviso for redemption.

(2) If the borrower or his assigns shall, on the —— day of —— next, pay to the lender, his executors, administrators, or assigns, the sum of £——, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will, at the request and cost of the borrower, his heirs, executors, administrators, or assigns, reconvey and execute a proper transfer under the said Acts of the said hereditaments unto the borrower, his heirs and assigns, or as he or they shall direct, and deliver the land certificate to him or them.

[*Add such other mortgage stipulations as may be required.*] (*pp*)

IN WITNESS, &c.

VIII. FURTHER CHARGE *where* MORTGAGE *effected by* DEEDS *executed* BEFORE *and* AFTER REGISTRATION *of* MORTGAGOR *as* PROPRIETOR (*q*).

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS these presents are intended to be supplemental to (1) an indenture (hereinafter called "the first principal indenture"), dated the —— day of ——, and made between the borrower, of the one part, and the lender, of the other part, being a mortgage to secure the repayment by the borrower to the lender of the sum of £——, and interest at the rate of —— per cent. per annum; (2) a registered charge, dated the —— day of ——, of which the lender is the registered proprietor; and (3) another indenture of mortgage (hereinafter called "the second principal indenture"), dated the —— day of ——, and made between the borrower, of the one part, and the lender, of the other part (such mortgage being protected by a

(*pp*) See *ante*, p. 174, note (*ee*).

(*q*) Stamp, *ad valorem* on the amount of the further charge. This precedent can be easily adapted to the case of a further charge where the mortgage has been effected before first registration by an unregistered instrument, and the mortgagee has been registered as first proprietor of the land. In the latter case the further charge will be made supplemental to the mortgage, and will contain a recital of the registration of the mortgagee as proprietor.

VIII. WHERE MORTGAGE EFFECTED BY DEEDS.

restriction entered on the register [and by a deposit of the land certificate, notice of which has been entered on the register]); AND WHEREAS the borrower is registered as proprietor of the hereditaments comprised in the first and second principal indentures, with a —— title (*qq*) under the Land Transfer Acts, 1875 and 1897, the said hereditaments being the land registered under the heading District ——, Parish ——, No. ——, subject to the said mortgage and registered charge; AND WHEREAS the said principal sum of £—— is still owing by the borrower to the lender on the security of the said first and second principal indentures and the said registered charge, but all interest thereon has been paid up to the date hereof; AND WHEREAS the lender has agreed to lend to the borrower the further sum of £—— upon having the repayment of the same with interest thereon at the rate of —— per cent. per annum, secured in manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant for payment.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*continue covenant for payment of amount of further charge and interest as in Precedent II.*, ante, *p.* 173].

Charge.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby declares that ALL the premises comprised in the first and second principal indentures and the said registered charge shall stand charged with the payment to the lender, his executors, administrators, or assigns, of the said sum of £——, and the interest thereon hereinbefore covenanted to be paid, as well as of the said sum of £——, and interest secured by the said first and second principal indentures and the said registered charge.

3. IT IS HEREBY AGREED AND DECLARED as follows:—

Agreement to register charge.

(1) The borrower will forthwith, at his own cost, execute and cause to be registered a charge to bear even date herewith charging the land registered under the title above mentioned with the payment to the lender of the said further sum of £—— and interest according to the covenant hereinbefore contained, and apply for a restriction in the form set forth in the schedule hereto, or as near thereto as circumstances will admit.

Powers, &c. in principal indenture

(2) All the powers and provisions given by or contained in the first and second principal indentures for securing the repay-

(*qq*) State whether "absolute," "qualified," or "possessory."

VIII. WHERE MORTGAGE EFFECTED BY DEEDS.

to apply to further advance.

ment of the said sum of £—— [*original debt*] and interest, shall extend and apply for securing the payment of the said sum of £—— [*new advance*] and interest in the same manner as if such last mentioned sum had formed part of the principal money secured by the said first and second principal indentures.

[*Add any further provisions which may be required.*]

In witness, &c.

The Schedule above referred to (*r*).

IX. MEMORANDUM *under* Hand *to* Accompany *a* Deposit *of a* Land Certificate *or* Certificate *of* Charge (*s*).

To [*lender*], of, &c.

I [*borrower*], of, &c., hereby declare that I have deposited with you the land certificate of [certificate of charge for £—— and interest on] the land registered under the heading District ——, Parish ——, No. ——, to secure the repayment to you, on demand, of the sum of £——, now lent by you to me (the receipt whereof I acknowledge), together with interest thereon at the rate of —— per cent. per annum from the date hereof.

Dated this —— day of ——.

(Signed) ——.

X. MEMORANDUM *under* Hand *to* Precede *an* Intended Deposit *of a* Land Certificate *or* Certificate *of* Charge (*t*).

To [*lender*], of, &c.

I [*borrower*], of, &c., hereby declare that I have this day applied to be registered as proprietor of [a charge for £—— and interest on] the land registered under the heading District ——, Parish ——, No. ——, and I hereby undertake forthwith, after I shall be so registered, to deposit the land certificate [certificate of

(*r*) See *ante*, p. 179.

(*s*) Stamp, *ad valorem* on the lower scale as on an equitable charge under hand: see Mortgages, Precedent XLI., note (*x*), p. 116.

(*t*) Notice of the deposit should be given to the registrar: see L. T. R. 243, and Form 75a. As to the effect of the deposit, see L. T. Act, 1897, s. 8 (4); and see also L. T. R. 243 to 251. As to withdrawal of notice, see L. T. Rules, 1907, 245, 246, 250.

charge] with you to secure the repayment to you, on demand, of the sum of £—— now lent by you to me (the receipt whereof I acknowledge), with interest thereon at the rate of —— per cent. per annum from the date hereof.

X. MEMORANDUM TO PRECEDE INTENDED DEPOSIT OF LAND CERTIFICATE.

Dated the —— day of ——.

(Signed) ——.

XI. TRANSFER *of* MORTGAGE *where* MORTGAGE *effected by* DEEDS *executed* BEFORE *and* AFTER REGISTRATION *of* MORTGAGOR *as* PROPRIETOR, MORTGAGOR *not* JOINING. VARIATIONS *where he is a* PARTY.

THIS INDENTURE (*u*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the one part, and [*transferee*], of, &c. (hereinafter called "the transferee"), of the other part (*x*).

WHEREAS these presents are intended to be supplemental to, &c. [*continue as in Precedent VIII.*, ante, *p.* 182. *Recite registration of mortgagor as proprietor and state of mortgage debt as in same precedent*]. Recitals:

AND WHEREAS the transferee has agreed to pay to the mortgagee the sum of £—— upon having such transfer as is hereinafter contained of the said sum of £—— and interest, and of the securities for the same (*y*). of agreement for loan.

(*u*) Stamp, *ad valorem* at the rate of 6*d.* per 100*l.* or fraction of 100*l.* on amount transferred. See *ante*, p. 140, note (*m*), as to inclusion of interest in arrear.

(*x*) Where the mortgagor is a party, the parties will run as follows:—"[*mortgagee*], of, &c. (hereinafter called 'the mortgagee'), of the first part; [*mortgagor*], of, &c. (hereinafter called 'the borrower'), of the second part; and [*transferee*], of, &c. (hereinafter called 'the transferee'), of the third part."

(*y*) Where the mortgagor is a party, add these recitals:—"AND WHEREAS the borrower has agreed to join in these presents in manner hereinafter appearing; AND WHEREAS, in pursuance of the said agreement, the mortgagee, at the request of the borrower, has handed [the land certificate, with a written request signed by the mortgagee, for the withdrawal of the notice of the deposit thereof, and] a transfer of the said registered charge to the transferee."

XI. BEFORE AND AFTER REGISTRATION.

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment of mortgage debt.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the transferee (*z*) to the mortgagee (the receipt whereof is hereby acknowledged), the mortgagee, as mortgagee, hereby assigns unto the transferee ALL THAT principal sum of £—— secured by the said first and second principal indentures and registered charge as aforesaid, and all interest due or to become due for the same, TO HOLD the same unto the transferee absolutely.

Grant of mortgaged land.

2. For the consideration aforesaid, the mortgagee, as mortgagee (*a*), hereby grants unto the transferee ALL and singular the hereditaments comprised in and granted by the second principal indenture or which are now by any means vested in the mortgagee, subject to redemption, by virtue of the first and second principal indentures and registered charge, or any of them; TO HOLD the same unto and to the use of the transferee, his heirs and assigns, subject to such equity of redemption as the same hereditaments are now subject to by virtue of the second principal indenture (*b*).

(*z*) Where the mortgagor is a party, say,
"at the request of the borrower."

(*a*) Where the mortgagor is a party, add—
"at the request of the borrower."

(*b*) Where the mortgagor is a party, instead of "subject to," &c., say,
"free from all equity of redemption under the second principal indenture and registered charge respectively, but subject to the proviso for redemption following,"
and then add, as a third clause, a proviso for redemption as in Precedent III., *ante*, p. 175, substituting "transferee" for "lender," and omitting the words "and an application to cancel any registered notice of the lease," unless the form of mortgage requires them to be inserted. Then should follow, as a fourth clause, a fresh covenant by the mortgagor with the transferee for payment of principal and interest as in Precedent II., *ante*, p. 173; then clause 3 above; and, lastly, a clause to the effect that—
"The security made hereby and by the principal indentures and the said registered charge (so soon as the transferee shall have been registered as proprietor thereof), shall form one entire security for the payment of the said principal money and interest."

3. The mortgagee hereby covenants with the transferee to hand to him forthwith the certificate of charge, and to execute and deliver to him a proper transfer of the said registered charge.

In witness, &c.

XII. RECONVEYANCE *of a* Mortgage *effected by* Deeds Executed *before and after* Registration *of* Mortgagor *as* Proprietor, *with* Registered Charge.

THIS INDENTURE (*c*), made the —— day of ——, 19—, Between [*mortgagee*], of, &c. (hereinafter called "the lender"), of the one part, and [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the other part.

Whereas, &c. [*recite that* "these presents are intended to be supplemental to" *the first principal indenture, registered charge, and second principal indenture, as in Precedent VIII.*, ante, *p.* 182].

And whereas, &c. [*recite registration of mortgagor as proprietor of the land as in Precedent VIII.*, ante, *p.* 182].

And whereas the said sum of £—— is still owing on the security of the said principal indentures and registered charge, but all interest thereon has been paid up to the date hereof, as the lender hereby admits.

NOW THIS INDENTURE WITNESSETH as follows:—

Reconveyance.

1. In consideration of the sum of £—— now paid by the borrower to the lender (the receipt whereof is hereby acknowledged), the lender, as mortgagee, hereby grants and releases unto the borrower All and singular the hereditaments and premises assured or charged by the said first and second principal indentures and registered charge respectively, or which are now by any means vested in the lender, subject to redemption, by virtue of the said principal indentures or either of them, To hold the same unto and to the use of the borrower, his heirs and assigns, freed and discharged from all principal moneys and interest secured by and from all claims and demands under the said principal indentures and registered charge, or any of them.

(*c*) Stamp, 6*d.* for every 100*l.* or part of 100*l.* secured by the mortgage.

XII. BEFORE AND AFTER REGISTRATION.

2. In consideration of the premises, the lender hereby covenants with the borrower that he the lender will forthwith, at the cost of the borrower, sign and deliver to the borrower a discharge of the said registered charge, and an application for the removal of the said restriction [and for withdrawal of the notice of the deposit of the land certificate, and will deliver the land certificate to the borrower].

Covenant by lender to execute discharge.

IN WITNESS, &c.

XIII. RECONVEYANCE *by* INDORSEMENT *on* MORTGAGE *made before* FIRST REGISTRATION *where* MORTGAGEE *is* REGISTERED *as* FIRST PROPRIETOR *of the* LAND [*as in Precedent VII.*, ante, *p.* 181].

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN the within named [*mortgagee*], of, &c. (hereinafter called "the lender"), of the one part, and the within named [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the other part; WHEREAS, in pursuance of the agreement in that behalf in the within written indenture contained, the lender has been registered as proprietor under the Land Transfer Acts, 1875 and 1897, of the within mentioned hereditaments, under the heading District ——, Parish ——, No. ——; AND WHEREAS the within mentioned sum of £—— is still owing on the security of the within written indenture, but all interest thereon has been paid up to the date hereof as the lender hereby admits.

NOW THIS INDENTURE WITNESSETH as follows:—

Reconveyance.

1. In consideration of the sum of £—— now paid by the borrower to the lender (the receipt whereof is hereby acknowledged), the lender hereby grants and releases unto the borrower ALL and singular the hereditaments and premises of which the lender is so registered as proprietor as aforesaid; TO HOLD the same unto and to the use of the borrower, his heirs and assigns, freed and discharged from all principal moneys and interest secured by and all claims and demands under the within written indenture.

Covenant by lender to execute transfer.

2. In consideration of the premises, the lender hereby covenants with the borrower that he the lender will forthwith, at the

(*d*) Stamp, 6*d*. for every 100*l*. or part of 100*l*. secured by the mortgage.

cost of the borrower, execute and deliver to him a proper transfer to him of the said hereditaments of which he the lender is so registered as proprietor as aforesaid. XIII. RE-CONVEYANCE BY INDORSEMENT.

In witness, &c.

MORTMAIN.

PRELIMINARY NOTE.

Conveyances in mortmain are now governed by the provisions of the Mortmain Acts, 1888 to 1892.

Under the Act of 1888 (51 & 52 Vict. c. 42), land assured to a corporation without a licence in mortmain or the authority of a statute shall be forfeited to the Crown: see Part I., sect. 1 (1).

Part II., sect. 4 (1) of the same Act provides that assurances to charitable uses (with the exceptions contained in the Act) shall be void unless made in accordance with the following requirements of the Act, viz.:—

1. The assurance must take effect in possession: sub-sect. (2).

2. Must contain no reservation for the benefit of the grantor (sub-sect. (3)) other than (i) a peppercorn or nominal rent; (ii) reservation of minerals, or (iii) of easements, or (iv) covenants as to the use or enjoyment of the land; (v) right to enter on non-payment of rent or breach of covenants, or (vi) stipulations of a like nature: sub-sect. (4).

3. In an assurance on sale for full and valuable consideration such consideration may consist of a rent or other annual payment: sub-sect. (5).

4. The assurance, if of land other than copyholds or of personal estate not being stock in the Public Funds, must be by deed executed in the presence of two witnesses (sub-sect. (6)); and (if of land or personal estate other than stock in the Public Funds) unless made for full and valuable consideration, must be made at least twelve months before the death of the grantor: sub-sect. (7).

5. In the case of stock in the Funds it must be transferred six months before the grantor's death: sub-sect. (8).

6. In the case of land or personal estate other than stock in the Funds it must be enrolled in the Central Office, or where the trusts are declared by a separate instrument, such separate instrument must be so enrolled within six months after execution: sub-sect. (9).

Part III., sect. 6 of the Act exempts from the operation of Parts I. and II. an assurance of land for a public park, a school house for an elementary school (as defined), or a public museum. And (sect. 7) from Part II. an assurance of land or of personal estate to be laid out in the purchase of land to or in trust for certain universities and colleges; and an assurance otherwise than by will to trustees for any society for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres.

Sect. 8 enacts as follows:—"Where by any statute in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner."

The Act of 1892 applies sect. 6 of the Act of 1888 so as to exempt from Parts I. and II. assurances by deed of land of any quantity to any local authority for any purpose for which such local authority is empowered by any Act of Parliament to acquire land.

Land may be held in mortmain for charitable purposes under several enabling statutes, *e.g.*:—

(1) Gifts for Churches Act, 1803 (43 Geo. 3, c. 108) (land not exceeding five acres or chattels not exceeding 500*l.* in value (value restriction removed by Mortmain Act, 1891: see *Re Douglas*, [1905] 1 Ch. 279) given by deed enrolled or by will executed three months before death, for providing church or residence for minister, churchyard or glebe).

(2) Places of Worship Sites Acts, 1873 and 1882 (sites not exceeding one acre for church, chapel, meeting-house, &c., or for residence of minister. Form of assurance given in the Act).

(3) Church Building Acts, 1818, 1819, 1822, 1838, 1851.

(4) Ecclesiastical Commissioners Act, 1866.

(5) The New Parishes Acts, 1843, 1844 (form of grant given in the Schedule to latter Act) and 1856, and District Church Tithes Act, 1865, s. 7.

(6) The School Sites Act, 1841 (form of grant given in sect. 10).

(7) Consecration of Churchyards Act, 1867 (form of conveyance given in sect. 5): see *Clegg* v. *Metcalfe*, [1914] 1 Ch. 808.

(8) The several Acts relating to the Queen Anne's Bounty, commencing with 2 & 3 Anne, c. 20, ss. 4, 5, and including the Act of 1838 (in which a form of grant is given), and the Parsonage Act, 1865.

(9) The Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112) (limited to one acre. For form of grant, see sect. 13).

(10) Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29, ss. 4—11).

(11) The Recreation Grounds Act, 1859 (22 Vict. c. 27) (in which a form of grant is given).

For a full list of such statutes, see Bourchier-Chilcott, p. 81.

Companies registered under the Companies (Consolidation) Act, 1908, "for the purpose of promoting art, science, religion, charity, or any other like object" not involving the acquisition of gain, can hold land (sect. 16), but not more than two acres, without a licence from the Board of Trade: sect. 19.

Land may be acquired and held by local and public authorities under their respective enabling statutes, a list of which will be found in Key and Elphinstone, 10th ed., vol. 2, p. 331.

For a form of settlement of freeholds and stocks and money by way of renewable trust for religious or charitable purposes, by means of which the settled property remains private property—the object being to avoid the creation of a trust of a charitable or public nature, and to exclude the application of the Charitable Trusts Acts and Mortmain Acts—see Key and Elphinstone's Precedents, 10th ed., vol. 2, p. 342.

Registered land.

An assurance of land under the Act of 1888 may be made by a registered transfer, which is exempt from the provisions of the Act as to execution in the presence of two witnesses and as to enrolment: Mortmain, &c. Act, 1888, s. 9. For form of transfer, see Land Transfer Rules, Form 37; and see Land Transfer Rules 145—150 and 257.

CONVEYANCE IN MORTMAIN OF BUILDING AND LAND.

PRECEDENTS.

I. CONVEYANCE *in* MORTMAIN *of a* BUILDING *and* LAND *to* TRUSTEES *to be used as a* COTTAGE HOSPITAL (*a*).

Parties.

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c., of the one part and [*trustee*], of, &c., [*trustee*], of, &c. [*other trustees as required*], of the other part:

Recital of desire to convey upon charitable trusts.

WHEREAS the said [*grantor*], being seised of the hereditaments hereinafter described for an estate of inheritance in fee simple in possession, is desirous of settling and assuring the same upon the charitable trusts and in the manner hereinafter appearing: NOW

Testatum.

THIS INDENTURE WITNESSETH, that in order to effectuate his said desire the said [*grantor*] hereby grants and conveys

Conveyance.

unto the said [*trustees*] and their heirs ALL THAT [*parcels*], TO HAVE AND TO HOLD the same unto and TO THE USE OF the said [*trustees*] their heirs and assigns, UPON the trusts and to and for

Trusts and powers.

the intents and purposes and with and subject to the powers and directions hereinafter declared of and concerning the same (that is to say):—

As to use of premises as a cottage hospital.

1. The trustees of these presents for the time being (hereinafter called the trustees) shall hold the premises upon trust to permit the same to be used as a hospital, infirmary, or dispensary, or for some similar purpose, for the benefit of such poor and sick persons as the trustees, or any such committee or persons acting by delegation under the trustees as hereinafter mentioned, shall think fit.

(*a*) As to the requirements of the Mortmain Act, 1888, as to execution, attestation, and enrolment: see Preliminary Note, *ante*, p. 189.

Stamps.

(*b*) A conveyance or transfer operating as a voluntary disposition *inter vivos* for charitable purposes will bear the same *ad valorem* stamp as a conveyance on sale, except in the very special case of a conveyance of land for an open space to a non-profit-sharing body incorporated by a special Act: Finance (1909-10) Act, 1910, s. 74. See *ante*, Conveyances, Vol. I., Preliminary Note, p. 307. The stamp duty must in every case be adjudicated: sub-sect. (2). But land held by a governing body for charitable purposes is partially exempted from reversion duty, undeveloped land duty and increment value duty by sect. 37 of the last-mentioned Act.

2. The trustees shall at all times have power to make rules and regulations for the control, management and use of the said hospital, infirmary, or dispensary, and from time to time to revoke, amend, or alter the said rules and regulations, as they shall in their own discretion think fit. As to making rules and regulations.

3. The trustees may from time to time delegate during such time or times as they shall think fit, the control, management and use of the premises to any committee or persons to be appointed for that purpose, in such manner as the trustees shall approve, but so as that every such delegation as aforesaid shall, at all times after it shall have been made, be revocable by the trustees. As to delegating management of hospital to committee.

4. The trustees may charge such (if any) sum or sums of money as they shall think fit for participation in the benefit of the trusts hereby created, or may admit any person or persons thereto without any payment whatsoever. As to admitting persons to benefit of hospital with or without payment.

5. No person shall be ineligible or considered as a less deserving object of the charity created by these presents or to be created under any power herein contained by reason or on account of his or her religious opinions. As to eligibility of candidates for admission.

6. It shall be lawful for the trustees at any time or times hereafter to sell or exchange for other hereditaments in England all or any of the said lands, or any lands, tenements, or hereditaments so taken in exchange by the trustees or acquired by them under the power of investment hereinafter contained; and upon any such exchange to give or receive any money for equality of exchange; and to convey the hereditaments so sold or parted with in exchange as aforesaid freed from all trusts whatsoever. As to sale and exchange of lands conveyed.

7. All (if any) money which shall be received by the trustees on any such sale or sales, exchange or exchanges, as aforesaid, may be invested in the names or under the joint legal control of the trustees either in the purchase of other lands, tenements, or hereditaments in England or in or upon any stocks, funds, or securities, in or upon which trustees may at the time of such investment be entitled to invest trust money, and any such investments may at the discretion of the trustees be varied or transposed into or for others of a nature hereby authorised, including such purchase as aforesaid. As to investment of proceeds of sale.

8. All hereditaments which shall be so acquired by exchange or purchase as aforesaid shall, until the trust first hereinbefore Purchased lands to be subject to trust.

I. GRANT OF LAND FOR COTTAGE HOSPITAL.

declared shall be revoked or altered in exercise of the powers in that behalf hereinafter contained, or until such hereditaments shall be sold or exchanged as aforesaid, be held upon the trust first hereinbefore declared of the premises.

Power for trustees to revoke or alter trusts.

9. It shall at all times hereafter be lawful for the trustees by any deed or deeds to revoke or alter all or any of the trusts, powers, and directions, including those as to meetings and the proceedings thereat, which by virtue of these presents or by virtue of these presents and of the exercise of any power herein contained shall for the time being be applicable to all or any of the hereditaments hereby assured, or to all or any other hereditaments, money, stocks, funds, or securities which may have been acquired under any of the powers herein contained or to the affairs of the charity, and to declare new trusts of such hereditaments, money, stocks, funds, or securities for such charitable or benevolent object or purpose as the trustees shall in their discretion think fit, but so that this clause shall not, nor shall anything in these presents contained, authorise the revocation of the declaration hereinbefore contained that no person shall be ineligible or considered as a less deserving object of this charity created by these presents, or to be created under any power herein contained, by reason or on account of his or her religious opinions.

Annual general meeting of trustees.

10. One ordinary meeting of the trustees shall be held in every year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

Special general meetings.

11. Any two of the trustees may call a special meeting by delivering at the several dwelling-houses of the other trustees or sending to them respectively through the post —— days previous notice of such meeting stating the time and place of holding the same, and the object or purposes for which it is to be held. A notice sent through the post and addressed to a trustee at his dwelling-house shall be effective, although such trustee may at the time be absent from home and may never actually receive such notice.

Place of meeting.

12. All meetings of the trustees shall be held either in the building so erected on the premises as aforesaid or at such other convenient place within the —— parish as shall have been agreed on by the trustees, as a place at which the meetings may be convened.

13. Three trustees at a meeting shall form a quorum.

Quorum.

14. Every decision of the trustees as to the exercise of any power hereby given to them shall be made by a resolution at an ordinary meeting or special meeting, carried either unanimously or by a majority of the votes of the trustees present at that meeting, and in case of an equality of votes the chairman of the meeting shall have a casting vote.

Voting at meetings.

15. Trustees dissenting from any lawful decision of the trustees, which shall have been so made as aforesaid, shall nevertheless concur in all such deeds and other acts as shall be requisite in order to give effect to such decision as last aforesaid.

Decision to bind dissenting trustees.

16. Minutes of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting or of the following meeting when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

Minutes of proceedings.

17. The trustees may from time to time make such rules and bye-laws for and in relation to the conduct of the business of the charity as they may think fit.

Rules and bye-laws.

18. The power of appointing a new trustee or new trustees of these presents shall be exercised by the majority of the trustees, and a trustee may at any time by writing under his hand resign his office.

Appointment of new trustees, &c.

19. So often as any trustee of these presents shall die or remain out of the United Kingdom for more than twelve calendar months, or be discharged from the trust of these presents, or become unfit to act, or incapable of acting in the said trusts, or shall resign his office, then, and in every such case, and within *six* calendar months thereafter, the power of appointing a new trustee shall be exercised and the trust filled up.

Vacancies to be filled up within *six* months.

In witness, &c.

II. CONVEYANCE IN MORTMAIN OF ALMSHOUSES, &c.

II. CONVEYANCE *in* MORTMAIN *of* ALMSHOUSES *and* LAND *for* CHARITABLE PURPOSES, *and* DECLARATION *of* TRUST *of* STOCK *for* KEEPING *the* ALMSHOUSES *in* REPAIR, &c. (*bb*).

Parties.

THIS INDENTURE (*c*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c. (hereinafter called "the grantor"), of the first part; [*wife*], the wife of the said [*grantor*], of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part:

Recitals: of seisin; of grantor;

WHEREAS the grantor is seised of or entitled to the messuages or cottages and other hereditaments hereinafter described and intended to be hereby granted for an estate of inheritance in fee simple in possession, free from incumbrances:

of erection of almshouses;

AND WHEREAS the said messuages or cottages have been lately erected by the said [*wife*], and are intended by her to be used and occupied as almshouses for poor widows and spinsters, inhabitants of the borough or parish of —— aforesaid, which said messuages or cottages are now in the several occupations of [*present occupiers*], who have been placed therein by the said [*wife*] as the occupants thereof during their respective lifetimes, subject to removal for misconduct only, and the grantor is desirous of conveying the same hereditaments and premises to the uses, upon the trusts, and in manner hereinafter declared and contained concerning the same:

of desire to convey;

of endowment.

AND WHEREAS, for the purpose of forming a fund for the payment of the poor-rates and other rates and taxes chargeable upon the said hereditaments and premises, and of the premiums on insurance against fire, and for keeping the said messuages and cottages in tenantable repair and condition, the said [*wife*] has invested the sum of £—— in the purchase, in the names of the said [*trustees*], of the sum of £—— $2\frac{1}{2}$ per Cent. Consolidated Stock, to be held by them upon the trusts hereinafter declared concerning the same.

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

(*bb*) As to the requirements of the Mortmain Acts, see Preliminary Note, *ante*, p. 189.

Stamp.

(*c*) Stamp, *ad valorem* at the rate of 1*l.* per 100*l.* of the value of the land and houses, and at the rate of 5*s.* per 100*l.* or part of 100*l.* on the value of the stock which is not "conveyed" or "transferred" by the trust deed, and so does not come under sect. 74 of the Finance (1909-10) Act, 1910, but under the schedule to the Stamp Act, 1891, *tit.* Settlement. The stamp must be adjudicated.

1. For effectuating the desire of the said [*wife*], and in consideration of the premises, the grantor hereby grants and conveys unto the said [*trustees*] and their heirs, ALL THAT piece or parcel of land situate, &c. [*describe parcels*], and those —— messuages or cottages (hereinafter called "the almshouses"), erected as aforesaid, and now being on the same piece or parcel of land, with the outbuildings thereto belonging: TO HOLD the said piece or parcel of land, almshouses, and premises, with their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns, for ever [subject nevertheless to the proviso hereinafter contained] (*d*), upon the trusts following, that is to say: Upon trust that they the said [*trustees*] and the survivors or survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees"), shall permit the present occupiers to occupy the said almshouses now occupied by them respectively during their respective lifetimes, free from any rent or render in respect of such almshouses; AND when and so often as any present or future occupier of the said almshouses shall die or cease to occupy the said almshouses, or any of them, shall from time to time permit such poor widow or spinster being [who shall have been for not less than —— years previously (*e*)] an inhabitant of the parish of —— aforesaid, as the trustees, but during the lives of the grantor and the said [*wife*], and the life of the survivor, with their or his or her concurrence, shall nominate, to occupy the almshouse, or each of the almshouses, so becoming vacant, free from rent or render as aforesaid for her lifetime: PROVIDED ALWAYS, that the present or succeeding occupiers of the said almshouses shall be removable by or at the instance of the parties or party in whom the right of nomination thereto is hereby vested, for disgraceful or disorderly conduct.

Grant of almshouses to trustees.

Upon trust to permit present occupants to occupy almshouses;

to fill up vacancies;

to remove occupants for misconduct.

2. IT IS HEREBY AGREED AND DECLARED that the trustees shall stand possessed of and interested in the said sum of £—— $2\frac{1}{2}$ per Cent. Consolidated Stock, upon trust that they the trustees shall, by and out of the dividends and annual proceeds of such sum of stock, pay and discharge all taxes, rates, assessments, and outgoings whatsoever (including the premiums or any policy of insurance against loss or damage by fire), which now are, or at

Declaration of trusts of stock.

(*d*) If clause 3 is omitted, the words in brackets must be struck out.

(*e*) See *Etherington* v. *Wilson*, L. R. 1 Ch. D. 160.

II. CONVEYANCE IN MORTMAIN OF ALMSHOUSES, &C.

any time hereafter shall be taxed, rated, charged, or assessed, or be payable upon or in respect of the said hereditaments and premises, or any part thereof: AND ALSO all sums or outlay which may be required for keeping the said almshouses and premises in tenantable repair and condition: AND shall from time to time retain the surplus of such dividends and annual proceeds, and accumulate the same by investment when at any time amounting to £——, so as to form a reserve fund to meet any extraordinary outlay in the way of repairs or otherwise, which may hereafter be required in respect of the said almshouses and premises.

Proviso that on deaths of trustees, land and stock shall be vested in official trustees (*f*).

3. PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that upon the death of any one of them the trustees, it shall be lawful for the survivors of them, and upon the death of any two of them, it shall be obligatory upon the survivors of them, and they are hereby empowered, to apply to the High Court of Justice, Chancery Division, and the Board of Charitable Commissioners for England and Wales, or to either of them, for an order that the hereditaments and premises intended to be hereby granted may be vested in the Official Trustee of Charity Lands and his successors, and that the trust funds of these presents may be vested in the Official Trustees of Charitable Funds under or by virtue of the provisions of the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, or either of such Acts, and immediately upon such vesting order being made, the hereditaments and premises hereby granted shall be held by the Official Trustee of Charity Lands and his successors, and the trust funds hereby provided and appropriated shall be held by the Official Trustees of Charitable Funds upon the trusts hereinbefore declared, of and concerning such hereditaments and premises respectively.

IN WITNESS, &c. (*g*).

(*f*) As to the powers and duties of official trustees of charity lands and charitable funds, and vesting orders, see stats. 16 & 17 Vict. c. 137, ss. 47—52; 18 & 19 Vict. c. 124, ss. 15—28.

If desired, this clause may be omitted, in which case clause 19 of the last preceding precedent may be inserted, or omitted in reliance on the statutory provisions as to appointment of new trustees.

(*g*) This deed must be attested by two witnesses, and enrolled: see Preliminary Note, *ante*, p. 190.

III. DEED *of* DECLARATION *of* TRUST *of a* MISSION-HOUSE. III. ENDOWMENT OF MISSION-HOUSE.

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN the reverend [*vicar*], vicar of the ecclesiastical district of St. Anne in ——, in the county of ——, of the one part, and [*trustee*], of, &c., [*other trustees*], and [*trustee*], of, &c., of the other part: WHEREAS, by an indenture dated the —— day of ——, 19—, and made between the said [*vicar*], of the first part; the Ecclesiastical Commissioners for England, of the second part; the right reverend the Lord Bishop of ——, of the third part; and the said [*trustees*], of the fourth part; in consideration of the sum of £—— paid by the said [*trustees*] into the Bank of England to the account of the said Ecclesiastical Commissioners, ALL that piece or parcel of land situate in the High Street of —— aforesaid, containing by admeasurement —— superficial feet or thereabouts, and which with the dimensions and abuttals is particularly described and delineated in the plan drawn in the margin thereof, and therein coloured pink, with the appurtenances, subject to the tithe commutation rentcharge, and all other duties and payments ecclesiastical or civil, charged upon or payable out of the same, and to all rights of way and easements affecting the same, was conveyed unto and to the use of the said [*trustees*], their heirs and assigns for ever: AND WHEREAS the said sum of £—— so paid by the said [*trustees*], as the consideration money for the said hereditaments and premises comprised in and granted by the said recited indenture as aforesaid, was in fact so paid by them out of moneys in their names arising from voluntary contributions, and applicable for the purposes hereinafter mentioned, and it has accordingly been agreed that such a declaration of trust as is hereinafter contained shall be made and executed: NOW THIS INDENTURE WITNESSETH, that it is hereby agreed and declared as follows:—

Parties.

Recitals: of conveyance of land for mission-house;

that consideration paid for land was raised by subscriptions.

Testatum.

1. The said [*trustees*], their heirs and assigns, shall henceforth stand and be seised and possessed of the said hereditaments and premises granted by the said recited indenture, and any erections or buildings for the time being thereon, and the rents and profits thereof (if any), upon the trusts and with and subject to the powers hereinafter declared and contained concerning the same,

Declaration of trust.

(*h*) Stamp, 10*s*. This deed must be enrolled: see *ante*, p. 190.

Stamp and enrolment.

III. ENDOWMENT OF MISSION-HOUSE.

that is to say, upon trust, as an ecclesiastical charity (*i*) for the general purposes of a mission-house, for the benefit of the vicar for the time being of the said district of St. Anne —— (hereinafter called "the vicar"), and for the use of the members of the Church of England in the said district, in manner hereinafter appearing.

Mission-house to be under control of vicar.

2. The said mission-house and premises shall be under the superintendence, authority, and control of the vicar: AND the trustees or trustee for the time being of these presents (hereinafter called "the trustees") shall at all times permit the said mission-house and premises to be used (a) for the celebration of divine service; (b) as a school for the education of children and adults, or children alone of the poorer classes in the district according to the principles of the Church of England; (c) as a class-room, meeting-room, or lecture-room for the religious or secular instruction of members of the Church of England; (d) for clerical meetings, general meetings, or committee meetings of any societies (parochial or otherwise) connected with the Church of England; (e) as a club-room in connection with the Church of England for the poorer classes in the said district; (f) for any other objects or purposes, spiritual, intellectual, moral, or social, for the benefit of members of the Church of England in the said district as the vicar shall from time to time think fit and determine: AND shall at all times permit the vicar by himself or his agent to have the custody and possession of the keys of the said mission-house and premises, and shall from time to time do all other things which may be necessary or proper for maintaining the superintendence and control of the vicar over the said mission-house and premises.

Power for trustees to sell, mortgage, lease, &c. the premises.

3. It shall be lawful for the trustees, with the consent of the vicar, from time to time to build upon, let, sell, pull down, rebuild and alter, or otherwise deal with the said hereditaments and premises, and any erections or buildings for the time being thereon, in such manner in all respects as the trustees shall think fit: But so nevertheless that no sale or other disposition of the said hereditaments and premises, or any part thereof (other than a lease from year to year, or for a term not exceeding two years in possession), shall be made or granted without the consent in writing of the Lord Bishop of —— for the time being (hereinafter called "the bishop").

(*i*) See, as to the importance of these words, *Re Perry Almshouses*, [1899] 1 Ch. 21.

III. ENDOWMENT OF MISSION-HOUSE.

As to application of moneys received.

4. The trustees shall apply and deal with the moneys arising from any sale, mortgage, or other disposition of the said hereditaments, or any part thereof, after payment thereout of the expenses of such disposition and any duties which may be payable thereon, for the general purposes of the mission-house aforesaid, with the consent of the vicar, in such manner as they the trustees shall think fit.

Power to apply moneys to other charitable purposes.

5. It shall be lawful for the trustees, at any time or from time to time, with the consent of the bishop and of the vicar, to apply and deal with the same last-mentioned moneys, or any part thereof, or any funds representing the same respectively, for such other public charitable purposes for the benefit of the said district of —— aforesaid, and the inhabitants thereof, or some part thereof respectively, and in such manner as the trustees shall think fit and determine, and with power if they or he shall think fit, with the like consent, to settle and approve of any scheme or schemes for such last-mentioned application, and for that purpose to revoke or vary the trusts and powers of these presents as they or he shall think fit and determine: And in particular the trustees may, with such consent as aforesaid, and with a view to using the premises for the purposes of a consecrated church, revoke such trusts and powers, and convey the said premises, or any part thereof, to any person or persons or corporation duly authorised to hold the same for any of the purposes of the Church Building Acts.

Power to appoint new trustees.

6. The power of appointing a new trustee or new trustees of these presents shall be exercised by the vicar, but no person shall be appointed trustee who is not a member of the Church of England: And if any trustee shall, in the opinion of the vicar and the majority of the trustees (such opinion to be expressed in writing and signed by them), cease to be a member of the Church of England, he shall cease to be a trustee hereof, and shall be deemed to be unfit to act as such.

The bishop to be visitor.

7. The bishop shall be and shall have the powers of visitor in respect of the said mission-house and premises, and the control of the vicar over the same shall be in all respects subject to the directions and orders of the visitor.

The bishop to appoint a substitute in the event of the absence or disability of the vicar.

8. During the absence, disability, or suspension of the vicar, or the avoidance of the benefice, the powers and authorities hereby given to the vicar may be exercised by such person being in holy orders as the bishop shall in writing appoint for that purpose.

In witness, &c.

NOTICES (*a*).

PRECEDENTS.

I. TO TENANT TO QUIT.

I. LANDLORD *to* TENANT *to* QUIT *on a* PRESCRIBED DAY (*b*).

I HEREBY [as agent for and on behalf of [*landlord*], of, &c.] give you notice to quit and deliver up on the —— day of ——, 19— (*c*), the possession of all that messuage or tenement, No. —, in —— street, in the city of ——, held by you of me as tenant.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*tenant*].

[*Signature of Landlord or of Agent as "Agent for the said [Landlord]."*]

(*a*) Notices do not require to be stamped.

(*b*) In the absence of any express agreement respecting the power of determining the tenancy (other than an agricultural holding) by notice, it may be determined by either party, at the expiration of any year of the tenancy, by giving half a year's notice, which half-year is computed in the customary manner:—Thus, a tenancy commencing at Lady-day may be determined by a notice delivered on or before the preceding Michaelmas-day, without regard to the number of days intervening between the two periods: *Roe* d. *Durant* v. *Doe*, 6 Bing. 574. So, where there is a yearly tenancy determinable by agreement by three months' notice, in the absence of an express provision that it is to be determinable "at any time," it can only be determined at the expiration of a year of the tenancy: *Lewis* v. *Baker*, [1906] 2 K. B. 599; *Dixon* v. *Bradford, &c. Society*, [1904] 1 K. B. 444. But it may be made determinable by agreement at any time: see *Soames* v. *Nicholson*, [1902] 1 K. B. 157.

In the case of holdings falling within the Agricultural Holdings Act, 1908, s. 22, a year's notice to quit is necessary, unless the landlord and tenant by writing under their hands agree that this section shall not apply, in which case a half-year's notice is sufficient.

As to notices to quit, where the time of the commencement of the tenancy is unknown.

(*c*) It sometimes happens that the landlord is unable to ascertain at what period the tenancy commenced, and cannot therefore safely give a notice to quit in specific terms. In such a case substitute for the specified date the following words:—

"at the expiration of the year of your tenancy which shall expire at or next after the end of one half-year ['one year' *in the case of an agricultural lease, see* ante, *note* (*b*)] from the time of service hereof": see *Sidebotham* v. *Holland*, [1895] 1 Q. B. 378.

II. TENANT *from* YEAR *to* YEAR *to* LANDLORD, *of* QUITTING.

I HEREBY give you notice that I shall quit and deliver up to you, on the —— day of ——, 19—, the possession of the messuage, farm, and lands, in the parish of ——, in the county of ——, now held by me of you as tenant from year to year.

As WITNESS my hand, this —— day of ——, 19—.
To Mr. [*landlord*].

[*Signature of Tenant.*]

III. LESSEE *to* LESSOR, *or vice versâ*, DETERMINING *a* TWENTY-ONE YEARS' LEASE *at* SEVEN *or* FOURTEEN YEARS (*d*).

IN pursuance of a power contained in an indenture of lease, dated the —— day of ——, I, the owner [of the reversion expectant on the determination] of the term thereby created, hereby give you notice that it is my intention to put an end to the term thereby created at the end of the first seven [fourteen] years thereof.

As WITNESS my hand, this —— day of ——, 19—.
To Mr. [*lessor*].

[*Signature of Lessee.*]

IV. LESSOR *to* LESSEE *to* REPAIR (*e*).

I [*landlord*], of, &c., dated the —— day of ——, hereby give you notice and require you, within —— calendar months from the date hereof [*or*, forthwith], to put in complete and substantial repair the messuage or dwelling-house held by you under an indenture of lease, dated the —— day of ——, from me, and particularly, that you do execute and make good the repairs and defects

(*d*) The notice must be given by or on behalf of the legal owner of the lease: *Stait* v. *Fenner*, [1912] 2 Ch. 504. As to what notice is sufficient, see *Bury* v. *Thompson*, [1895] 1 Q. B. 696.

(*e*) This notice will serve (*mutatis mutandis*) where it is the landlord's duty to repair: see *Torrens* v. *Walker*, [1906] 2 Ch. 166.

IV. OF LESSOR TO LESSEE TO REPAIR.

[found by my surveyor on an examination of the premises, and which are] mentioned in the schedule hereto.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*lessee*]. [*Signature of Lessor.*]

THE SCHEDULE ABOVE REFERRED TO.

V. LESSOR *to* LESSEE *to* REMEDY *and* PAY COMPENSATION *for* BREACH *of* COVENANT *to* REPAIR, *previous to* RE-ENTRY (*f*).

I [*landlord*], of, &c., hereby give you notice that in the indenture of lease, dated the —— day of ——, was contained a covenant on your part that you would during the term thereby granted [*set out fully covenant to repair as in the lease*]; AND I further give you notice that the said covenant has not been duly performed on your part, and that the particular breaches thereof complained of are the committing or permitting the several acts of waste and dilapidations enumerated in the schedule hereto: AND I hereby require you to remedy all the said breaches of covenant [so far as the same are capable of remedy, and to make to me compensation in money for such breaches as are not capable of remedy] *or* [and to make compensation to me in money for such breaches].

In the event of your failure to comply with this notice within —— months, it is my intention to re-enter upon the said premises and claim damages for breaches of the said covenant.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*lessee*]. [*Signature of Lessor.*]

THE SCHEDULE ABOVE REFERRED TO.

Relief from forfeiture.

(*f*) As to notice to lessees to remedy and compensate for breaches of covenant before re-entry and enforcing forfeiture of leases, see sect. 14 of the Conveyancing Act, 1881. As to the contents of the notice required by this section of the Act, see *Fletcher* v. *Nokes*, [1897] 1 Ch. 271; *Re Serle*, [1898] 1 Ch. 652; *Horsey Estate, Ltd.* v. *Steiger*, [1899] 2 Q. B. 79; and *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134. Underlessees, who are not within sect. 14 of the 1881 Act, are granted relief by sect. 4 of the C. A. 1892: *Rogers* v. *Rice*, [1892] 2 Ch. 170; *Re Riggs*, [1901] 2 K. B. 16; *North London Land Co.* v. *Jaques*, 32 W. R. 283. See, generally, as to relief from forfeiture under C. Act, 1881, as amended by C. Act, 1892, s. 2, K. & E. 10th ed. vol. 2, p. 372, note (*a*); and Wolstenholme, 10th ed. pp. 59 *et seq.*

VI. TENANT *to* LANDLORD *of* DAMAGE *caused by* GAME (*g*).

VI. OF TENANT TO LANDLORD OF DAMAGE BY GAME.

The Agricultural Holdings Act, 1908.

To Mr. [*landlord*].

I HEREBY give you notice that I have sustained damage to [*particulars of crop damaged and place*], such damage being caused by game on —— Farm, in respect of which I am entitled to compensation under the Agricultural Holdings Act, 1908, and I hereby authorise you or your agent to enter upon the said farm and premises and inspect the damage.

As WITNESS (*g*).

[*Signature of Tenant.*]

VII. TENANT *to* LANDLORD CLAIMING COMPENSATION *for* DAMAGE *caused by* GAME, UNREASONABLE DISTURBANCE, *and for* IMPROVEMENTS.

The Agricultural Holdings Act, 1908.

To Mr. [*landlord*].

I HEREBY give you notice as follows:—

1. I claim from you the sum of £—— as compensation under the Agricultural Holdings Act, 1908, arising from damage done by game, notice and full particulars of which I gave to you by a notice, dated, &c.

2. I intend to claim the compensation to which I am entitled under sect. 11 of the above mentioned Act, on quitting the —— Farm, and I hereby authorise you or your agent to enter upon the said farm and premises for the purpose of making a valuation of my household goods, implements of husbandry, produce, and farm stock on or used in connection with the said farm and premises (*h*).

3. I claim the sum of £—— from you as compensation under

(*g*) See Agricultural Holdings Act, 1908, s. 10.

(*h*) This notice must be given within two months of the notice to quit: sect. 11 of Agricultural Holdings Act, 1908. As to what is "good and sufficient cause" for notice to quit under this section, see *Re Bonnett and Fowler*, [1913] 2 K. B. 537. As to the tenant's claim for unreasonable disturbance, see sect. 11 of the A. H. Act, 1908, extended by the Agricultural Holdings Act, 1914.

VII. OF TENANT TO LANDLORD CLAIMING COMPENSATION FOR DAMAGE BY GAME.

the aforesaid Act, in respect of the improvements made by me on the said farm mentioned in the schedule hereto (*i*).

As witness, &c.

[*Signature of Tenant.*]

The Schedule above referred to.

Date.	Particulars of Claim.	Amount claimed.
18—	Draining meadow, 10 acres, at a cost of £ —— per acre	£——
18—	Laying down —— Close in permanent pasture	£——
19 -	Erecting barn on the said holding	£——
19— to 19—	Application to land of purchased artificial manures, as follows:- In —— 19—, —— tons of ——, at £—— per ton	£——
	In ——, 19— , &c.	£——
19— to 19—	Consumption of —— tons of oil cake at £—— per ton	£——
	Total amount claimed	£——

VIII. NOTICE *of* Counterclaim *by* Landlord *to* Tenant *under the Agricultural Holdings Act*, 1908.

The Agricultural Holdings Act, 1908.

To Mr. [*tenant*], of, &c.

WITH REFERENCE to your notice of claim dated, &c., and in pursuance of the above Act, I hereby give you notice that I intend to make a claim in respect of arrears of rent, and also in respect of acts of waste committed and permitted by you, and of breaches of covenant committed by you, during your tenancy of the said farm, the particulars of which arrears and acts of waste and breaches of covenants are respectively set forth in the schedule hereto.

Dated, &c.

[*Signature of Landlord.*]

(*i*) See sect. 6 of the Act.

SCHEDULE.

Particulars of Claim.	Amount claimed.
Arrears of rent	£——
Waste in cutting down trees in —— Close	£——
Waste in pulling down a shed, &c.	£——
Breach of covenant in not [*describe breaches*], such covenant being contained in the lease dated, &c., whereby the tenancy was created	£——
Total amount claimed	£——

IX. LESSEE *to* LESSOR *of an intention to call for a* RENEWAL *of* LEASE.

I HEREBY give you notice, that, in consequence of the decease of [A. B.], one of the *cestuis que vie* named in the indenture of lease, dated the —— day of ——, and made between ——, it is my intention, pursuant to the covenant or provision for renewal therein contained, to accept and take a renewed lease of the messuage therein comprised; and I nominate my son [*son*], aged —— years on the —— day of ——, as the substituted *cestui que vie* to be named in such renewed lease; and I further give you notice, that I am ready to surrender my present lease, and to pay the premium or fine for the granting of the said renewed lease, as required by the said covenant for renewal.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*lessor*].

[*Signature of Lessee.*]

X. LESSEE *to* LESSOR, *of assigning* LEASE (*k*).

I HEREBY give you notice, that, by an indenture dated the —— day of ——, 19— [*or*, already prepared, and intended to be executed forthwith], and made [*or*, purporting to be made] between

(*k*) The words within brackets will be used where the lessee is bound to give the notice previously to the assignment.

X. OF ASSIGNING LEASE.

me of the one part, and [*assignee*], of, &c., of the other part, the messuage, being No. —, in —— Place, in the parish of ——, in the county of ——, demised by you to me, has been [*or*, is intended or expressed to be] assigned by me to the said [*assignee*], for all the residue of the term granted by you to me.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*lessor*]. [*Signature of Lessee.*]

XI. MORTGAGEE *to* TENANT *to pay the* RENT *to him* (*l*).

I HEREBY give you notice, that, by an indenture dated the —— day of ——, 19—, and made between [*mortgagor*], of ——, of the one part, and me, the undersigned [*mortgagee*], of the other part, I have become entitled as mortgagee to the receipt of the rents of the messuage and premises known as, &c., and now in your occupation. And I require you to pay to me the rent now due, and hereafter to become due, in respect of the said premises.

As WITNESS my hand, this —— day of ——, 19—.

To Mr. [*tenant*]. [*Signature of Mortgagee.*]

XII. BY RECEIVER *for* MORTGAGEE *to* TENANT.

I HEREBY give you notice, that, by virtue of an indenture dated the —— day of —— last, made between [*mortgagor*], of ——, of the first part, [*mortgagee*], of ——, of the second part, and me, the undersigned [*receiver*], of the third part, I was duly appointed receiver of the rents and profits of, among other property, the messuage and piece of ground situate in the parish of ——, in the county of ——, in your occupation, and held by you under a lease dated, &c. And I accordingly require you to pay to me the rent now due, and hereafter to become due from you, in respect of the said premises accordingly.

As WITNESS my hand, this —— day of ——.

To Mr. [*tenant*]. (Signed) [*Receiver*].

(*l*) As to the right of an equitable mortgagee to rent, see *Finck* v. *Tranter*, [1905] 1 K. B. 427; *Vacuum Oil Co.* v. *Ellis*, [1914] 1 K. B. 693.

XIII. SECOND *to* First Mortgagee (*m*).

I HEREBY give you notice, that, by an indenture dated the —— day of ——, and made between [*mortgagor*], of the one part, and me, the undersigned [*mortgagee*], of the other part, the several messuages, lands, and hereditaments, situate in ——, now in mortgage to you, were conveyed to me by the said [*mortgagor*] in fee simple by way of mortgage, for securing the sum of £—— and interest.

As witness my hand, this —— day of ——.

To Mr. [*first mortgagee*].

[*Signature of Second Mortgagee.*]

XIV. MORTGAGOR *to* Mortgagee, *of Intention to pay off* Mortgage Debt (*n*).

I HEREBY give you notice, that, at the expiration of six calendar months from the date hereof, I shall pay off the principal sum of £—— and interest owing from me to you, secured by an indenture of mortgage dated the —— day of ——, and made between, &c.

As witness my hand, this —— day of ——.

To Mr. [*mortgagee*].

[*Signature of Mortgagor.*]

(*m*) This notice will give priority over future advances made by the first mortgagee, even if the first mortgage deed was intended to secure future advances: *Hopkinson* v. *Rolt,* 9 H. L. C. 514; *London and County Banking Co.* v. *Ratcliffe,* L. R. 6 App. Cas. 722; *West* v. *Williams,* [1899] 1 Ch. 132. See also *Freeman* v. *Laing,* [1899] 2 Ch. 355.

(*n*) If the mortgagee has taken no steps to enforce payment (*Bovill* v. *Endle,* [1896] 1 Ch. 648), the mortgagor must give six months' notice to pay off, or tender six months' interest in lieu of notice: *Smith* v. *Smith,* [1891] 3 Ch. 550; *Johnson* v. *Evans,* 61 L. T. 18. See also *Edmondson* v. *Copland,* [1911] 2 Ch. 301; *Fitzgerald's Trustee* v. *Mellersh,* [1892] 1 Ch. 385; *Santley* v. *Wilde,* [1899] 1 Ch. 747.

XV. OF MORTGAGEE'S INTENTION TO SELL.

XV. MORTGAGEE *to* MORTGAGOR *of Intention to* SELL, *unless* PRINCIPAL *and* INTEREST MONEYS *be paid at a certain Time* (*o*).

I HEREBY give you notice that I require you to pay off the principal and interest moneys (*p*) owing to me by virtue of the indenture of mortgage dated the —— day of ——, and made between, &c., and further, that in default of your so doing within three calendar months from the date hereof (*q*), I shall immediately proceed to a sale of the messuages and hereditaments comprised in or subject to the said indenture, or such part or parts thereof as I may think fit.

As WITNESS my hand, this —— day of ——.

To Mr. [*mortgagor*] (*r*).

[*Signature of Mortgagee.*]

XVI. ASSIGNEE *of* BOND *or* MORTGAGE *to* OBLIGOR *or* MORTGAGOR (*s*).

I HEREBY give you notice, that by an indenture dated the —— day of —— last, made between [*obligee* or *mortgagee*], of ——, of the one part, and me, the undersigned, of the other part, the principal sum of £——, the payment whereof is secured by a bond or obligation executed by you to the said [*obligee*], dated the

(*o*) See also, where principal is payable on demand, Precedent XIX., *post*, p. 212.

(*p*) Add "and costs," if any.

(*q*) To enable a mortgagee to exercise the statutory power of sale, three months' notice is required, unless otherwise provided by the mortgage deed: see Conveyancing Act, 1881, s. 20. The three months run from the service of the notice: *Barker* v. *Illingworth*, [1908] 2 Ch. 20.

(*r*) If it is not known who are the persons interested in the equity of redemption, the notice should be left on the premises (see sect. 67 of the Conveyancing Act, 1881), addressed as follows:—

"To Mr. [*mortgagor*] if living, or his legal representatives, or other the persons interested in the equity of redemption of the property comprised in the above mentioned mortgage."

(*s*) As to the importance of this notice for the protection of the assignee's interest, see K. & E. 10th ed. vol. ii. p. 363, note (*a*).

XVI. OF ASSIGNEE TO OBLIGOR OR MORTGAGOR.

—— day of ——, 19— [*or.* mortgage dated, &c., and made, &c., of certain freehold premises situate, &c.], together with all interest due or to become due thereon, as from the —— day of —— last [together with the securities for the same], has been assigned by the said [*obligee* or *mortgagee*] to me absolutely, and all payments of principal and interest must in future be made to me.

As WITNESS my hand, this —— day of ——.

To Mr. [*obligor*].

(Signed) [*Assignee.*]

XVII. ASSIGNEE *of* POLICY *of* LIFE ASSURANCE *to an* INSURANCE OFFICE *pursuant to the Policies of Assurance Act*, 1867 (*t*).

To the —— Assurance Society.

WE HEREBY give you notice, that by an indenture dated, &c., and made between [*parties*], a policy of assurance, effected by the said [*mortgagor*] on his life in your office, dated the —— day of ——, and numbered —— in your books, for the sum of £—— thereby assured, and all moneys to be received or become payable under or by virtue of the said policy, by way of bonus or otherwise, have been assigned by the said [*mortgagor*] to [*mortgagee*] absolutely [*or*, by way of mortgage for securing certain moneys owing by the said [*mortgagor*] to the said [*mortgagee*] and interest thereon]. And we request you to acknowledge in writing the receipt of this notice.

Dated the —— day of ——.

[*Signature of Mortgagee's Solicitors*],
Solicitors for the said [*Mortgagee*].

(*t*) See sect. 3 of this Act. An acknowledgment of the receipt of the notice should be obtained from the office which is entitled to make a charge for such receipt of a sum not exceeding 5*s.*: see sect. 6.

XVIII. OF ASSIGNEE OF REVERSIONARY INTEREST TO TRUSTEES.

XVIII. ASSIGNEE *of a* REVERSIONARY INTEREST *in* MONEY *in the* FUNDS *to the* TRUSTEES *in whose* NAMES *the* STOCK *is standing.*

To [*trustees*], trustees of the will and codicil of ——, deceased [*or*, of a settlement dated, &c.], and to all others whom it may concern.

I HEREBY give you notice, that by an indenture dated the —— day of ——, and made between [*assignor*], of, &c., of the one part, and me, the undersigned [*assignee*], of the other part, all the share, right, and interest of the said [*assignor*] of and in the trust funds and property comprised in and subject to the trusts of the said will [*or*, settlement], were assigned by the said [*assignor*] to me absolutely [*or*, by way of mortgage, for securing certain moneys advanced by me to the said [*assignor*], and interest] (*u*).

As WITNESS my hand, this —— day of ——, 19—.

[*Signature of Assignee.*]

XIX. MORTGAGEE *to* MORTGAGOR, *requiring immediate* PAYMENT *where the advance and interest are payable on* DEMAND (*x*).

I HEREBY demand of you immediate payment of the principal sum of £——, now owing to me on the security of an indenture

Persons giving notice not bound to point out the duty of the person receiving it.

(*u*) Where notice or intimation is given of a fact, the person receiving it is bound to inform himself of all the legal consequences resulting from that fact, the rule being *ignorantia legis non excusat;* and, therefore, it is unnecessary for the person giving the notice to point out any act to be done, or omitted to be done, by the person receiving it.

Duties of trustees as to notices.

As to the duties of trustees with respect to notices, see *Phipps* v. *Lovegrove,* L. R. 16 Eq. 80; *Hallows* v. *Lloyd,* 39 Ch. D. 686; *Ward* v. *Duncombe,* [1893] A. C. 369, 392; *Low* v. *Bouverie,* [1891] 3 Ch. 82; *Porter* v. *Moore,* [1904] 2 Ch. 367.

Where the Public Trustee is "custodian trustee," notice should be given to him and to the managing trustees: see Public Trustee Act, 1906, s. 4 (2) (b).

This form can be adapted to notice of the assignment of a legacy or other interest under a will. Upon the assignment of an immediate legacy, notice must be given to the executors who have not renounced, or to the administrators, with the will annexed: *Re Dallas,* [1904] 2 Ch. 385.

(*x*) See *Worthington & Co., Ltd.* v. *Abbott,* [1910] 1 Ch. 588, for what

of mortgage, dated the —— day of ——, and the interest at the rate of —— per cent. per annum as from the —— day of ——, 19—, owing in respect thereof.

As WITNESS my hand, this —— day of ——.

To Mr. [*mortgagor*].

[*Signature of Mortgagee.*]

XX. ONE PARTNER *to his* CO-PARTNERS, *of* INTENTION *to* RETIRE.

UNDER and by virtue of the power in this behalf contained in the deed or articles establishing our partnership, dated the —— day of ——, 19—, I hereby give you notice, that it is my intention to retire from the said partnership on the —— day of —— next.

As WITNESS my hand, this —— day of ——.

To [*partners*].

[*Signature of Partner.*]

XXI. NOTICE *of* EXPULSION *of one* PARTNER *in* CONSEQUENCE *of* BREACH *of* ARTICLES (*y*).

WE HEREBY give you notice, that, in consequence of your having broken the —— article of our partnership deed, bearing date the —— day of ——, whereby it is provided [*transcribe article*], we hereby, in pursuance of the power in that behalf contained in the said deed, dissolve the said partnership, so far as you are concerned, from the —— day of —— next, on which day we shall be prepared to pay you the amount declared to be the

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constitutes sufficient demand. The debtor must have a reasonable time after demand made in which to find the money and inquire into the authority of the person making the demand: *Toms* v. *Wilson,* 4 B. & S. 442; *Moore* v. *Shelley,* L. R. 8 App. Cas. 285, 293.

(*y*) It is not a condition precedent to the validity of the notice, in the absence of *mala fides,* that the partner serving the notice should, before serving it, disclose to his co-partner the causes of complaint against him, or give him an opportunity of being heard in his defence: *Green* v. *Howell,* [1910] 1 Ch. p. 495.

XXI. OF EXPULSION OF PARTNER.

value of your share in the partnership effects at our last annual settlement of accounts, and interest thereon, as provided by the said partnership deed.

As WITNESS our hands, this —— day of ——.

To Mr. [*partner*].

[*Signature of Partners.*]

XXII. OF DISSOLUTION *of* PARTNERSHIP, *to be* INSERTED *in the* LONDON GAZETTE (*z*).

NOTICE is hereby given, that the partnership lately subsisting between us in the city of Bristol, in the trade or business of merchants, was this day dissolved by mutual consent [*or*, "effluxion of time," *or otherwise, as the case may be*] (*a*).

As WITNESS our hands, this —— day of ——.

(Signed) [A. B.]
[C. D.]
[E. F.]

XXIII. NOTICE *by a* TENANT *for* LIFE *to the* TRUSTEES *of the* SETTLEMENT *of his* GENERAL INTENTION *to* SELL, *&c., under the Settled Land Acts* (*b*).

To [*trustee*], one of the trustees [*or*, Messrs. —— & Co., the solicitors of the trustees] of the settlement created by an indenture,

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(*z*) See Partnership Act, 1890, s. 36, as to the effect of this notice.

(*a*) If the partnership is dissolved as to one only of several partners, add—

"So far as regards [*retiring partner*], who retires from the firm: All debts due to or owing by the late firm will be received and paid by [*continuing partners*], who will continue to carry on the said business under the present style of A. & Co."

(*b*) See the provisions contained in the Settled Land Acts of 1882 and 1884 with respect to the notices required to be given by tenants for life of their intention to exercise their statutory powers.

Under sect. 45 of the Act of 1882 (45 & 46 Vict. c. 38)—

Notice to trustees.

"(1.) The notice must be sent by registered letter one month before the sale or other exercise of the powers, 'or of a contract for the same,' to

XXIII. BY TENANT FOR LIFE TO TRUSTEES OF INTENTION TO SELL.

dated, &c. [*or*, by the will, dated, &c., and proved, &c., of [*testator*], late of ——, Esquire, deceased].

I HEREBY give you notice, pursuant to the powers in this behalf vested in me by virtue of the Settled Land Acts, 1882 to 1890, that it is my general intention, from time to time, as and when opportunity shall occur, as tenant for life, to make sales, exchanges [partitions] and leases of the settled lands comprised in the indenture [*or*, will] above referred to, or such part or parts thereof, or such easements, rights, or privileges over or in relation to the same as I shall think proper.

As WITNESS my hand, this —— day of ——.

[*Signature of Tenant for Life.*]

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each of the trustees of the settlement and to the solicitor for the trustees, if any such solicitor is known to the tenant for life.

"(2.) At the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

"(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice."

By sect. 5 of the Settled Land Act, 1884 (47 & 48 Vict. c. 18), it is enacted:—

"(1.) The notice required by sect. 45 of the Act of 1882 as to sale, exchange, partition, or lease may be notice of a general intention in that behalf.

"(2.) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required.

"(3.) Any trustee, by writing, may waive notice, either in any particular case, or generally, and may accept less than one month's notice."

It is doubtful, however, if a general notice would remain effectual for any long period; and on a change of tenant for life a new notice must, of course, be given.

Sub-sect. (1) of this section does not apply to mortgages or charges by the tenant for life; specific notice of an intention to mortgage or charge the settled lands must therefore still be given: see *Ray's Settled Estates*, 25 Ch. D. 464, which, though overruled mostly by the Act of 1884, is, with regard to this point, still in force.

XXIV. BY TENANT FOR LIFE OF INTENTION TO SELL.

XXIV. NOTICE *by* TENANT *for* LIFE *of* INTENTION *to* SELL SPECIAL PROPERTY *under the powers of the Settled Land Acts.*

To [*trustee*], *as in Precedent XXIII.*, ante.

I HEREBY give you notice, that it is my intention to sell [*or,* lease] such of the property, subject to the above mentioned settlement [*or,* will], as is described in the schedule hereto.

As WITNESS my hand, this —— day of ——.

[*Signature of Tenant for Life.*]

SCHEDULE.

[*Giving a short description of the property to be sold.*]

XXV. NOTICE *by* TENANT *for* LIFE *to the* TRUSTEES *of the* SETTLEMENT *of his* INTENTION *to* MORTGAGE *under the Settled Land Acts.*

To [*trustee*], &c., *as in Precedent XXIII.*, ante.

I HEREBY give you notice, pursuant to the Settled Land Acts, 1882 to 1890, that it is my intention, as tenant for life, to mortgage the lands mentioned in the schedule hereto, part of the settled lands comprised in the indenture [*or,* will] above referred to, to raise money for enfranchisement of certain copyhold or customary lands, parcel of the manor of ——, in the county of ——, other part of the said settled lands.

As WITNESS my hand, this —— day of ——.

[*Signature of Tenant for Life.*]

THE SCHEDULE ABOVE REFERRED TO.

XXVI. TO PRODUCE TITLE DEEDS.

I HEREBY give you notice, and require you to produce to Mr. [*solicitor*], of ——, solicitor, on the —— day of —— next, on his application at your residence in the city of ——, all the deeds and writings mentioned or referred to in an indenture dated the —— day of ——, by which the same were covenanted to be

produced by you to me [*or*, by which you acknowledged my right to production of the same]; and I hereby undertake to pay you the reasonable costs and charges which may attend the production of the said deeds and writings, on your informing me of the amount thereof.

As WITNESS my hand, this —— day of ——.

(Signed) [*Covenantee.*]

To Mr. [*covenantor*].

XXVII. PURCHASER *to* VENDOR *that his* PURCHASE-MONEY IS PRODUCING *no* INTEREST.

I HEREBY give you notice, that the sum of £——, the unpaid portion of the purchase-money, payable by me to you under the contract between us, bearing date the —— day of ——, is now in the hands of my bankers, Messrs. ——, having been appropriated to a special account to my credit, and is producing no interest or advantage whatsoever [and therefore I shall hold myself discharged from any obligation henceforth to pay interest for the same].

As WITNESS my hand, this —— day of ——, 19—.

To [*vendor*].

(Signed) [*Purchaser.*]

XXVIII. VENDOR'S SOLICITORS *to* PURCHASER *to complete* PURCHASE.

SIR,

WE HEREBY give you notice, on behalf of our client, Mr. ——, of, &c., the vendor of the freehold house and lands lately contracted to be purchased by you by an agreement dated the —— day of ——, that the day thereby fixed for completion of the purchase is now long past, and that the vendor is ready and willing to make and execute, and to procure the concurrence of all necessary parties (if any) to a conveyance to yourself, or as you shall direct, of the fee simple in possession of the premises comprised in the said agreement, in accordance with the conditions and stipulations of the same; AND that the vendor requires you, within —— days from this date, to tender such conveyance for

XXVIII. VENDOR'S SOLICITORS TO PURCHASER TO COMPLETE PURCHASE.

execution, and to complete the purchase, and pay the remainder of the purchase-money with interest up to the day of such completion, as provided by the said agreement: And we further give you notice, that the vendor will hold you liable for all loss or damage which may be incurred by him by reason of any delay or default on your part in completing the said purchase, or otherwise in relation to the said agreement.

We are, &c.,
A. B. & Co.,
Vendor's Solicitors.

To [*purchaser*], Esq.

XXIX. CESTUI QUE TRUST *to* Trustees, *calling upon them to* Sell Stock, *and place out* Moneys *on* Mortgage.

I HEREBY authorise and request you to sell the sum of —— Stock now standing in your names, as trustees of the will of [*testator*], my late husband, deceased, and to lend the moneys arising therefrom to [*intended mortgagor*], on the mortgage security of two leasehold messuages, situate in ——, held for the remainder of a term of seventy years, commencing in the year 1904, and respectively subject to the several ground rents of £—— and £——.

As witness my hand, this —— day of ——, 19—.

To [*trustees*].

(Signed) [*Cestui que trust.*]

XXX. STATUTORY Notice *to* Creditors (*c*).

[A. B.], deceased.—Pursuant to the Law of Property Amendment Act, 1859, notice is hereby given that all creditors and other persons having any claims or demands upon the estate of [A. B.], late of, &c., deceased (who died on the —— day of ——,

(*c*) As to the distribution of the assets of a testator or intestate after notice given by the executor or administrator to creditors to send in their claims, see the Law of Property Amendment Act (22 & 23 Vict. c. 35), s. 29. As to what is sufficient notice by personal representatives, see *Re Bracken*, 43 Ch. D. 1.

XXX. STATUTORY NOTICE TO CREDITORS.

19—, and whose will was proved in the Principal [—— District] Probate Registry of the High Court of Justice, on the —— day of ——, 19—, by [*executor*], of, &c., the sole executor named in the said will) [*or*, administration of whose estate was granted to ——, on the —— day of ——, by the Principal [—— District] Probate Registry of the High Court of Justice], are hereby required to send in writing full particulars of such claims and demands to the said [executor *or* administrator], or to the undersigned Messrs. [C. D.] & Co., of No. —, —— Street, in the city of London, his solicitors, on or before the —— day of —— next, after which date the said [executor *or* administrator] will proceed to distribute the assets of the said [——], deceased, among the persons entitled thereto, having regard only to the claims and demands of which he shall then have notice, and that he will not be liable for the assets of the said [——], deceased, or any part thereof, so distributed, to any person of whose debt or claim he shall not then have had notice.

Dated this —— day of ——.

[C. D.] & Co.,
Solicitors for the Executor.

For notice by trustee of bankrupt lessee to lessor of intention to disclaim the lease, see Form 76 in the Appendix to the Bankruptcy Rules, 1883.

See also "Arbitration," Vol. I., pp. 120, 122, 123, as to notices relating thereto.

PARTITIONS.

PRELIMINARY NOTE.

Modes of partition.

PARTITIONS may be effected (1) by deed, (2) by an order of the Court under the Partition Acts, 1868 and 1876, or (3) by an order of the Board of Agriculture. As to partition by deed, see Real Property Act, 1845, ss. 3 and 4.

Partition by Board of Agriculture.

As to partition by order of the Board of Agriculture, instructions as to procedure and the necessary forms can be obtained at

3, St. James's Square, S.W.: see 5 Encyclopædia of Precedents, 573.

Settled land. Tenants for life and other limited owners are given powers of partition by the Settled Land Act, 1882, s. 3 (iv), including partition in consideration of money paid for equality of partition (*ibid.*) to be paid out of capital money: sect. 21 (iv); or raised by mortgage: sect. 18; see also sects. 4 (2) (5) and (6), 17 (extended by Settled Land Act, 1890, s. 5), 5, and 24 (4) (5) and (6). As to conveyance by tenant for life, see sect. 20. Money received for equality of partition must be paid to the trustees or into Court at the option of the tenant for life: sect. 22; and the land taken on partition must be conveyed, if freehold, to the uses of the settlement, or if copyhold or leasehold, upon trusts corresponding with those uses: sect. 24. The tenant for life may contract for partition: sect. 31. Notice of his intention to exercise his powers must be given to the trustees by the tenant for life under sect. 45. (See as to this conveyance Preliminary Note, Vol. I., p. 311.)

Lunatics. As to lunatics, see Lunacy Act, 1890, s. 120, and Lunacy Act, 1908, s. 1; Settled Land Act, 1882, s. 62.

Registered land. For a form of instrument of partition of registered land, see Land Transfer Rules, First Sched., Form 43; and see Land Transfer Rules, 156.

Stamp. Where no money is paid for equality of partition, or where the amount so paid does not exceed 100*l.*, a 10*s.* stamp will suffice; but where the consideration exceeds 100*l.*, an *ad valorem* duty as on a conveyance on sale must be paid in respect thereof: see sect. 73 of the Stamp Act, 1891. As to the amount of such duty, see Vol. I., Conveyances, Preliminary Note, p. 307.

Presumably the proviso in sect. 73 of the Finance (1909-10) Act, 1910, that it shall not apply where the consideration is under 500*l.*, would apply to the sums paid for equality of partition; in which case, where they do not exceed 500*l.*, the lower scale of duty would be payable, and the deed should contain a statement as to value as in a conveyance (see Conveyances, Precedent I., Vol. I., p. 317); but until this question has been judicially decided it would be wiser to have the stamp adjudicated.

Increment value duty is not payable on a partition as it is not a sale; and for the same reason registration in a compulsory area is not required on a partition.

PRECEDENTS.

I. DEED *of* PARTITION *of* FREEHOLDS *between* TWO TENANTS *in* COMMON *effected by* ONE DEED.

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; and [*grantee to uses*], of, &c., of the third part: WHEREAS [under or by virtue of the will dated the —— day of ——, 19—, of [*testator*], late of ——, deceased, who died on the —— day of ——, 19—, and whose said will was proved on the —— day of ——, 19—, in the Principal Probate Registry by [E. F.] and [G. H.], the executors therein named, [and of an indenture of conveyance, dated, &c., and made between the said [E. F.] and [G. H.], of the one part, and the said [A. B.] and [C. D.], of the other part] (*b*) the said [A. B.] and [C. D.] are now seised of, or entitled to the several messuages and hereditaments hereinafter described, in equal undivided moieties as tenants in common in fee simple in possession, free from incumbrances; AND WHEREAS the said [A. B.] and [C. D.] have agreed to effect a partition of the said messuages and hereditaments in manner hereinafter appearing; AND WHEREAS upon the treaty for the said partition, it was agreed that the deeds and documents of title relating to the said premises hereinafter described should be retained by the said [A. B.], who should enter into such acknowledgment and undertaking with respect thereto as are hereinafter contained. NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of title;

of agreement for partition;

of agreement as to custody of deeds.

Testatum.

1. In pursuance of the said agreement, and for the purpose of effecting such partition, they, the said [A. B.] and [C. D.], according to their respective shares and interests respectively, hereby, as beneficial owners, grant unto the said [*grantee to uses*], ALL THOSE several messuages, closes of land, and hereditaments situate at ——, in the county of ——, and particularly described

Conveyance by tenants in common.

Parcels by reference to schedules.

(*a*) Stamp, 10*s*.

(*b*) See L. T. A. 1897, s. 3, as to the conveyance by the personal representatives to the devisees. The words in brackets may be omitted, if desired.

I. OF PARTITION OF FREEHOLDS BETWEEN TWO TENANTS IN COMMON EFFECTED BY ONE DEED.

in the first and second schedules hereto (*c*); together with all ways and easements now or at any time heretofore used or enjoyed therewith respectively (*d*); To HOLD the premises unto the said [*grantee to uses*] and his heirs, as to the messuages, lands, and hereditaments described in the said first schedule, to the use of the said [A. B.], his heirs and assigns, to be henceforth held by him and them in severalty; AND as to the messuages, lands, and hereditaments described in the said second schedule, to the use of the said [C. D.], his heirs and assigns, to be henceforth held by him and them in severalty (*e*).

Easements.

Habendum.

(*c*) This is the most usual and convenient mode of describing the parcels in a partition deed; it may also often be advisable to refer to a plan annexed to the deed, as in Precedent III., *post*, p. 228.

(*d*) Notwithstanding that sect. 6 of the Conveyancing Act, 1881, renders the insertion of general words in most cases useless, it seems prudent in the case of a partition to insert an express grant of rights and easements which will operate as a grant *de novo* of any formerly existing rights and easements which may have been extinguished by unity of possession.

(*e*) If by reason of the property being situate in some part of his Majesty's dominions to which the provisions of the Conveyancing Act do not extend, or if, for any other reason, it is desired to insert express covenants for title in the deed, the words "as beneficial owners" will be omitted from the operative part of the deed, and the following form of covenants may be here inserted:—

Covenants for title;

"AND the said [A. B.], so far as respects only the one undivided moiety, of which he claims to be seised, as is hereinbefore recited, of the premises hereby expressed to be conveyed, and so far as respects the acts, deeds, and defaults of him, the said [A. B.], and of his ancestors and testators respectively, and those claiming under them respectively; and the said [C. D.], so far as respects only the other undivided moiety of the said premises, and so far as respects the acts, deeds, and defaults of him the said [C. D.], and of his ancestors and testators respectively, and those claiming under them respectively, for themselves, the said [A. B.] and [C. D.] respectively, hereby covenant with the said [*grantee*], that, notwithstanding anything done, omitted, or knowingly permitted by the said [A. B.] and [C. D.] respectively, or by any of their ancestors or testators, the said [A. B.] and [C. D.] have power to grant and convey all the premises hereby expressed to be conveyed to the uses and in manner aforesaid; AND THAT the same premises shall at all times hereafter remain to the several uses hereinbefore

for right to convey;

for quiet enjoyment;

2. The said [A. B.] hereby acknowledges the right of the said [C. D.] to the production of the several deeds and documents of title mentioned in the third schedule hereto, and to delivery of copies thereof, and undertakes for the safe custody thereof.

I. OF PARTITION OF FREEHOLDS BETWEEN TWO TENANTS IN COMMON EFFECTED BY ONE DEED.

Acknowledgment and undertaking as to deeds.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

The Third Schedule above referred to.

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declared concerning the same respectively, and be quietly held and enjoyed, and the rents and profits thereof received accordingly, without any interruption or disturbance by the said [A. B.] and [C. D.] respectively, or any person or persons claiming from, through, or in trust for them respectively, or any of their ancestors or testators; And that, free and discharged, or by the said [A. B.] and [C. D.] respectively, or their respective heirs, executors, or administrators, effectually indemnified from or against all estates, charges, incumbrances, claims, and demands whatsoever, made, created, or occasioned by the said [A. B.] and [C. D.] respectively, or any person or persons claiming from, through, or in trust for them, or any of their ancestors or testators respectively; And further, that the said [A. B.] and [C. D.] respectively, and every person claiming through, or in trust for them respectively, or any of their ancestors or testators respectively, will, at all times hereafter, on the request and at the cost of the said [C. D.] and [A. B.] respectively, or other the person or persons for the time being seised of or interested in the premises under the uses hereinbefore declared, execute, and do every such assurance and thing for more effectually assuring all or any of the premises hereby expressed to be conveyed to the use hereinbefore declared, as by the said [C. D.] and [A. B.] respectively, or other such person or persons as aforesaid, shall be reasonably required."

free from incumbrances;

and for further assurance.

II. OF PARTITION OF FREEHOLDS BETWEEN THREE TENANTS IN COMMON EFFECTED BY SEPARATE DEEDS.

II. DEED *of* PARTITION *of* FREEHOLDS *between* THREE TENANTS *in* COMMON *effected by* SEPARATE DEEDS.

Parties. THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [C. D.], of, &c., of the first part; [E. F.], of, &c., of the second part; and [A. B.], of, &c., of the third part:

Recitals: of title; WHEREAS the said [A. B., C. D., and E. F.] are now seised of or entitled to the several messuages and hereditaments described in the first, second, and third schedules hereto, in equal shares as tenants in common, free from incumbrances.

of agreement for partition; AND WHEREAS the said [A. B., C. D., and E. F.] have agreed to effect a partition of the said messuages and hereditaments in manner following, that is to say, that the hereditaments described in the first schedule hereto shall be taken and enjoyed by the said [A. B.] in severalty, in lieu of his undivided share of the entirety of the said messuages and hereditaments; AND that the sum of £—— shall be paid by the said [A. B.] to the said [C. D.], and the sum of £—— shall be paid by the said [A. B.] to the said [E. F.] for equality of partition, and that the hereditaments described in the second and third schedules hereto respectively shall be taken and enjoyed by the said [C. D.] and [E. F.] respectively in severalty, in lieu of their respective undivided shares of the entirety of the said hereditaments.

of conveyances of other parts of the property. AND WHEREAS the said hereditaments described in the second and third schedules hereto respectively are intended to be conveyed to the said [C. D.] and [E. F.] respectively by two several indentures, bearing even date herewith, and made as to the one of such indentures between the said [A. B.], of the first part, the said [E. F.], of the second part, and the said [C. D.], of the third part; and as to the other of the said indentures between the said [A. B.], of the first part, the said [C. D.], of the second part, and the said [E. F.], of the third part.

Testatum. NOW THIS INDENTURE WITNESSETH that, in consideration of the conveyances intended to be effected by the said

(*f*) Stamp, 10*s*., and a further *ad valorem* stamp on the aggregate amount of the sums paid for equality of partition, if more than 100*l*., as on a conveyance on sale. This being treated as the principal deed, the other separate conveyances will bear 10*s*. stamps only; but if any money is paid for equality of partition, each of such deeds should have a denoting stamp to show that the proper stamp duty was paid on the principal deed.

II. OF PARTITION OF FREEHOLDS BETWEEN THREE TENANTS IN COMMON EFFECTED BY SEPARATE DEEDS.

indentures of even date herewith, as aforesaid, and in consideration also of the respective sums of £—— and £—— now paid by the said [A. B.] to the said [C. D.] and [E. F.] respectively (the receipt of which sums of £—— and £—— respectively the said [C. D.] and [E. F.] do hereby respectively acknowledge), the said [C. D.] and [E. F.], each of them conveying as beneficial owner of the share, estate, and interest in the said hereditaments, to which he is entitled as aforesaid, and all other, if any, his share, estate, and interest therein, do hereby grant and confirm unto the said [A. B.], ALL THOSE the two equal undivided third parts or shares, and all other, if any, the part or parts, share or shares, and interest of them, the said [C. D.] and [E. F.], of and in ALL and singular the messuages, lands, and hereditaments described in the first schedule hereto, TO HOLD the same unto and to the use of the said [A. B.], his heirs and assigns, to the intent that the entirety of the same premises may be henceforth vested in the said [A. B.], his heirs and assigns, in severalty (*h*).

Conveyance by two of the tenants in common to the third (*g*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

(*g*) Another mode of conveyance would be by all the tenants in common to a grantee to uses, to the use of the one who is to take in severalty. It would be quite easy to adapt this precedent to that form of conveyance by reference to Precedent I.

(*h*) Each of the other conveyances will be in the same form as this precedent, with the following variations. In the conveyance to C. D. of the hereditaments described in the second schedule, the parties will be (1) A. B., (2) E. F., and (3) C. D. There will be a recital of the intention to convey the premises in the "first and third schedules" by indentures of even date, varying the parties as required; and a further recital that upon such conveyance to A. B. the sums of £—— and £—— were paid to C. D. and E. F. respectively for equality of partition. And if the title deeds are to be retained by A. B., the deed will contain a recital—

"AND WHEREAS it has been agreed that the deeds and documents specified in the fourth schedule hereto shall be retained by

III. OF FREEHOLDS AND COPYHOLDS BY CO-HEIRESSES.

III. DEED *of* PARTITION *of* FREEHOLD *and* COPYHOLD MESSUAGES *between two* CO-HEIRESSES, *a sum being paid for* EQUALITY *of* PARTITION, EXCEPTION *of* MINES *and* MINERALS.

Parties.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the first part; [C. B.], of, &c., of the second part; and [*grantee to uses*], of, &c., of the third part:

Recitals of parties being entitled in coparcenary,

WHEREAS [D. B.], late of, &c., being at the date of his death hereinafter mentioned seised of or entitled to the messuages and hereditaments particularly mentioned in the first, second, and third schedules hereto respectively as to the hereditaments mentioned in the first and second schedules respectively, for an estate of inheritance in fee simple in possession, and as to the hereditaments mentioned in the third schedule for an estate of inheritance to him and his heirs according to the custom of the manor of ——, in the county of ——, and as to all the said hereditaments, free from incumbrances, died on the —— day of ——, 19—, intestate, leaving his two daughters, the said [A. B.] and [C. B.], his only issue him surviving, and letters of administration of the real and personal estate and effects of the said [D. B.] were on the —— day of —— granted to [E. F.], of, &c.;

Admission to the copyholds.

AND WHEREAS the said [A. B.] and [C. B.] were on the —— day of —— duly admitted to the said copyhold hereditaments;

Conveyances by the personal representative.

AND WHEREAS by an indenture dated, &c., and made between the said [E. F.], of the one part, and the said [A. B.] and [C. B.], of the other part, the said hereditaments mentioned in the first and second schedules hereto respectively were conveyed unto and to the use of the said [A. B.] and [C. B.], their heirs and assigns, all the funeral expenses and debts of the said [D. B.] having been

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the said [A. B.], and that he shall give such acknowledgment and undertaking in respect thereof as are hereinafter contained."

The sums paid for equality of partition will not be mentioned in the consideration, and the conveying parties and the parcels will be altered as required, and an acknowledgment and undertaking as to the deeds retained by A. B. will be added. The conveyance to E. F. will be in the same form (*mutatis mutandis*) as the conveyance to C. D.

Stamp.

(*i*) Stamp, 10*s*., and *ad valorem* as on conveyance by way of sale in respect of the equality money, if exceeding 100*l*.: see Stamp Act, 1891, s. 73, and schedule, Partition; and see Preliminary Note, *ante*, p. 220.

previously paid as the said [E. F.] in the same indenture declared (*k*); AND WHEREAS the said [A. B.] and [C. B.] are desirous of making a partition of the said messuages and hereditaments; and they have agreed that the messuage numbered ——, in —— Place, and other the hereditaments described in the first schedule hereto, shall be taken and enjoyed by the said [A. B.] in severalty, in lieu of her undivided share of the entirety of the said messuages and hereditaments; and that the several messuages and hereditaments particularly mentioned in the second schedule hereto, and also the said copyhold hereditaments mentioned in the third schedule hereto, shall be taken and enjoyed by the said [C. B.] in severalty, in lieu of her undivided share of the entirety of the said hereditaments, and also that the sum of £—— shall be paid by the said [A. B.] to the said [C. B.] for equality of partition; But it has been agreed that the partition so made shall not include any mines or minerals in, upon, or under, but only the surface of the hereditaments and premises hereby conveyed; AND WHEREAS the said [A. B.] and [C. B.] are desirous that the hereditaments so to be allotted to them respectively, should be conveyed and assured in the manner hereinafter appearing; AND WHEREAS the deeds and documents of title mentioned in the fourth schedule hereto, relate not only to the said messuage and hereditaments so allotted to the said [A. B.] as aforesaid, but also to certain closes thereto adjoining and forming part of the hereditaments hereby allotted to the said [C. B.]; and it has been agreed that such deeds and documents shall be retained by the said [A. B.], and that she should enter into the acknowledgment and undertaking hereinafter contained with respect to the same. NOW THIS INDENTURE WITNESSETH as follows:—

—of agreement to make partition;

—of the intention to convey;

—as to custody of deeds.

Testatum.

1. In pursuance of the said agreement, and in consideration of the premises, and also in consideration of the sum of £—— now paid by the said [A. B.] to the said [C. B.] for equality of partition (the receipt whereof is hereby acknowledged), the said [A. B.] and [C. B.] hereby, so far as relates to their respective

Coparceners, according to their respective interests convey.

(*k*) See the Land Transfer Act, 1897, Part I.; and see Vol. I., Conveyances, Preliminary Note, p. 313. It is assumed, for the purpose of this precedent, that the intestate was admitted to the copyholds: see L. T. A. 1897, s. 1 (4); *Re Somerville and Turner*, [1903] 2 Ch. 583.

III. OF FREEHOLDS AND COPYHOLDS BY CO-HEIRESSES.

undivided moieties or other shares or interests therein respectively, hereby as beneficial owners, grant unto the said [*grantee*], and his heirs, ALL THOSE the several messuages, lands, and hereditaments situate in the parishes of —— and —— respectively, in the county of ——, and particularly mentioned in the first and second schedules hereto respectively, and delineated with the abuttals in the map or plan hereunto annexed, wherein the messuage and hereditaments mentioned in the said first schedule are enclosed with a pink line, and the several messuages and hereditaments mentioned in the second schedule being situate on, or forming several separate and detached pieces or plots of ground, are enclosed with blue lines respectively; TOGETHER with all ways and easements now or at any time heretofore used or enjoyed therewith; EXCEPT, nevertheless, and always reserved out of this present conveyance, all mines and minerals in, upon, or under the hereditaments and premises hereby conveyed or any part thereof; TO HOLD the premises, except as aforesaid, unto the said [*grantee*] and his heirs to the uses following, that is to say: AS TO the said messuage and hereditaments mentioned in the said first schedule, TO THE USE of the said [A. B.], her heirs and assigns, to be henceforth held by her and them in severalty; AND AS TO the said several messuages and hereditaments mentioned in the said second schedule, TO THE USE of the said [C. B.], her heirs and assigns, to be henceforth held by her and them in severalty.

Parcels by reference to schedules and plan.

Exception of mines, &c.

Habendum.

Proviso that mines, &c. shall continue to be held in common.

2. IT IS HEREBY AGREED AND DECLARED that all mines and minerals in, upon, or under the hereditaments hereby conveyed, and every part thereof, shall continue to be held and enjoyed by the said [A. B.] and [C. B.], and their respective heirs and assigns, according to their undivided shares and interests therein respectively, as if this present partition and conveyance had not been made.

Covenant to surrender copyholds.

3. In further pursuance of the said agreement and in consideration of the premises, the said [A. B.] hereby as beneficial owner covenants with the said [C. B.], her heirs and assigns, that she the said [A. B.], her heirs or assigns, will so soon as conveniently may be surrender into the hands of the lord of the said manor of ——, ALL THAT the one equal undivided moiety of her the said [A. B.], of and in all and singular the copyhold land and hereditaments comprised in the third schedule hereto; TOGETHER with all ways and easements now or at any time heretofore used and enjoyed

therewith; To THE USE of the said [C. B.], her heirs and assigns, according to the custom of the said manor, and at and by the rents, suits, and services therefor and of right accustomed (*kk*).

Acknowledgment and undertaking as to title deeds.

4. The said [A. B.] hereby acknowledges the right of the said [C. D.] to the production of the several deeds and documents mentioned in the fourth schedule hereto, and to delivery of copies thereof, and undertakes for the safe custody thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

THE FOURTH SCHEDULE ABOVE REFERRED TO.

IV. DEED *of* ASSIGNMENT *in the* NATURE *of a* PARTITION, *by two* TENANTS *in* COMMON *mutually* ASSIGNING *their respective* SHARES *in* LEASEHOLD PROPERTY *held under* SEVERAL LEASES (*l*).

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c., Parties.

(*kk*) The minerals, &c. are not excepted as to the copyholds.

(*l*) Where a partition is to be made of leasehold property, it is effected either by procuring all the part owners to concur in assigning the entirety to a third person, upon trust to assign to the several parties their respective allotments, or each joint owner assigns to the others his undivided share in the parts to be taken in severalty by them. The advantage of the latter mode is, that the partition is effected by a single deed, and therefore it has been adopted in the present instance. If the property is vested in a trustee, of course a separate assignment must be taken from him. Remarks upon the partition of leaseholds.

It may be observed, that, if the portions of a leasehold estate allotted to several parties be comprised in one lease, an apportionment of the reserved rent would be requisite; and it would be proper to give cross-powers of distress to the respective parties; for which see next precedent. The lease also, in such case, should be deposited with a third person for the mutual benefit of the parties, or delivered to one of them, he undertaking to produce it to the other or others.

(*m*) Stamp, 10*s*., and *ad valorem* as on a conveyance by way of sale on the amount of the equality money, if exceeding 100*l*.: see Preliminary Note, *ante*, p. 220. This deed should be executed in duplicate, and the duplicate will bear a denoting stamp.

IV. OF LEASEHOLDS HELD UNDER SEVERAL LEASES.

of the other part: WHEREAS [*recite two leases, respectively comprising the several messuages afterwards described, granted to* [R. S.]; *also the will of* [R. S.], *bequeathing all his personal estate to* [A. B.] *and* [C. D.], *as tenants in common, and appointing them executors; and the death of the testator, and the grant of probate of his will, in the usual manner*]; AND WHEREAS the said [A. B.] and [C. D.] have agreed that the undivided moiety of the said [A. B.], of and in the messuage and premises comprised in the firstly hereinbefore recited lease, shall be assigned to the said [C. D.]; and that, in consideration thereof, the undivided moiety of the said [C. D.], of and in the messuage and premises comprised in the second hereinbefore recited lease, shall be assigned to the said [A. B.]; and, inasmuch as the value of the messuage to be allotted in severalty to the said [C. D.] exceeds the value of the messuage to be allotted to the said [A. B.], it has been agreed that the said [C. D.] shall pay to the said [A. B.] the sum of £——, as an equivalent for such excess, so far as respects the moiety of the said [A. B.]. NOW THIS INDENTURE WITNESSETH as follows:—

Recital of leases.

Agreement for mutual assignment.

And for payment of a sum of money.

Testatum.

[A. B.] assigns to [C. D.] his moiety in premises comprised in first lease.

1. In pursuance of the said agreement, and in consideration of the assignment hereinafter contained, and also in consideration of the sum of £——, for equality of partition now paid by the said [C. D.] to the said [A. B.] (the receipt whereof is hereby acknowledged), he, the said [A. B.], hereby as beneficial owner assigns unto the said [C. D.], ALL THAT the undivided moiety of him, the said [A. B.], of and in all and singular the messuage or tenement and premises comprised in and demised by the first hereinbefore recited indenture of lease, dated the —— day of ——,

Habendum.

To HOLD the said moiety, half-part or share, or other the premises hereinbefore assigned unto the said [C. D.], for the residue now unexpired of the term of —— years, granted by the first hereinbefore recited lease; subject, nevertheless, to the payment of the rent, and to the performance and observance of all and singular the covenants, conditions, and agreements, respectively reserved and contained by and in the same lease, and on the lessee's part henceforth to be paid, observed, and performed.

Subject to rent, &c.

In consideration of assignment before contained, [C. D.] assigns to

2. In further pursuance of the said agreement, and in consideration of the assignment hereinbefore contained, the said [C. D.] hereby as beneficial owner assigns unto the said [A. B.], ALL THAT undivided moiety of him the said [C. D.], of and in

IV. OF LEASEHOLDS HELD UNDER SEVERAL LEASES.

all and singular the messuage or tenement and premises comprised in and demised by the secondly hereinbefore recited lease, dated the —— day of ——: To HOLD the said moiety, half-part or share, and premises lastly hereby assigned unto the said [A. B.], for the residue now unexpired of the term of —— years, granted by the secondly hereinbefore recited lease, SUBJECT, nevertheless, to the payment of the rent, and to the performance and observance of the several covenants and conditions reserved and contained by and in the secondly hereinbefore mentioned lease, and on the lessee's part henceforth to be paid, observed, and performed.

[A. B.] his moiety in premises comprised in second lease.

Habendum.

Subject to rents, &c.

3. The said [A. B.] hereby covenants with the said [C. D.] that he, the said [A. B.], his executors, administrators, or assigns, will henceforth from time to time duly pay the rent and perform and observe all the covenants and conditions reserved and contained by and in the secondly hereinbefore mentioned lease, and henceforth, on the part of the lessee, to be paid, observed, and performed respectively; AND WILL also keep the said [C. D.], his heirs, executors, administrators, estate and effects indemnified from and against all proceedings, costs, damages, claims, and demands for or on account of the non-payment, breach, non-performance, or non-observance of any such rents, covenants, or conditions; AND the said [C. D.] hereby covenants with the said [A. B.] [*similar covenant to pay rent, &c., in respect of* "the first hereinbefore recited lease," *and to indemnify* [A. B.] *therefrom*] (*n*).

Covenants by [A. B.] to pay rents, &c.

Similar covenants by [C. D.].

IN WITNESS, &c.

(*n*) See as to inserting express covenants for title, *ante*, p. 222, note (*e*). The express covenants for title in a partition deed relating to leaseholds would be similar to those in the case of freeholds there given, substituting the words "assign" instead of "grant," "for the term" instead of "to the use," and "during the said term to be quietly held, &c." for "at all times hereafter remain, &c., and be quietly held, &c."; and omitting all reference to "ancestors and testators." The covenants in the present case would be by the tenants in common with each other, instead of with a grantee to uses.

V. OF LEASEHOLDS HELD UNDER ONE LEASE.

V. DEED *of* ASSIGNMENT, *in the* NATURE *of a* PARTITION, *made between two late* PARTNERS, *of a* DWELLING-HOUSE, SHOP, *and* WAREHOUSES, *held under* ONE LEASE; APPORTIONMENT *of* RENT, *with* CROSS POWERS *of* DISTRESS.

Parties.

THIS INDENTURE (*o*), made the —— day of ——, BETWEEN [A. B.], of the one part, and [C. D.], of the other part.

Recital that [A. B.] and [C. D.] were partners;

WHEREAS the said [A. B.] and [C. D.] have for some time past carried on the trade or business of ——, in partnership, and have been interested in the capital, joint stock and profits of the said partnership in the proportions following: (that is to say), the said [A. B.] in two-thirds thereof, and the said [C. D.] in one-third thereof;

of purchase of leasehold by them;

AND WHEREAS [*recitals of a building lease of land to original lessee for ninety-nine years, at the rent of* 14*l.* 18*s.*, *and an additional rent of* 50*l. in case certain trades were carried on in the buildings to be erected; and of assignment of lease by lessee to* [A. B.] *and* [C. D.], *and completion by them of a dwelling-house and adjacent shop and warehouses in performance of covenants in lease*];

that leaseholds were purchased for partnership purposes;

AND WHEREAS the said lease was purchased by the said [A. B.] and [C. D.], and the said messuages or tenements, and other buildings, were so erected and completed by them as aforesaid, for the purposes of the said partnership business, and with and out of the joint capital thereof;

of dissolution of partnership, and settlement of accounts, &c.;

AND WHEREAS the said [C. D.] has recently retired from the said business, and the said partnership has been dissolved, and the accounts between the said [A. B.] and [C. D.] have been settled, and partition and transfer, and satisfaction of their respective shares in the said partnership stock, capital, and effects, have been made and concluded, except so far as relates to the messuages and hereditaments comprised in the said indenture of assignment;

of agreement for partition.

AND WHEREAS, upon the said dissolution of the said partnership, it was agreed between the parties hereto, that the messuage or dwelling-house, and other hereditaments, first hereinafter described, should belong, and be assigned to, the said [C. D.], for the residue of the said term of ninety-nine years therein now unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*, being one-half of the said rent of 14*l.* 18*s.*, and also to the covenants and conditions

(*o*) Stamp, 10*s.*: see *ante*, p. 229, note (*m*).

in the said lease contained, so far only as the same relate to the messuage and hereditaments first hereinafter described, and that the shop, warehouses, and hereditaments, secondly hereinafter described, should belong and be assigned to the said [A. B.], for the residue of the said term of ninety-nine years therein, now unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*, being the other half of the said rent of 14*l.* 18*s.*, and also to the covenants and conditions in the said lease contained, so far only as the same relate to the shop, warehouses, and hereditaments, secondly hereinafter described: And it was further agreed that the hereinbefore recited lease should be retained by the said [A. B.], who should enter into the acknowledgment and undertaking with respect thereto, hereinafter contained.

v. OF LEASEHOLDS HELD UNDER ONE LEASE.

NOW THIS INDENTURE WITNESSETH as follows:— *Testatum*:

1. In pursuance of the said agreement, and in consideration of the assignment hereinafter contained, the said [A. B.] hereby as beneficial owner assigns and releases unto the said [C. D.] ALL THOSE the two equal undivided third parts or shares, or other the parts, shares, or interest, of him the said [A. B.] of and in all that messuage or dwelling-house [*describe parcels allotted to* [C. D.]], being part of the premises comprised in the said lease, TO HOLD the same unto the said [C. D.] henceforth for the residue now unexpired of the said term of ninety-nine years, SUBJECT to the payment of the apportioned yearly sum of 7*l.* 9*s.*, and also of the said increased rent of 50*l.*, in case the same shall become payable, and so far as the payment thereof shall be occasioned by the said [C. D.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of the covenants and conditions contained in the said lease, on the part of the lessee to be observed and performed, so far as such covenants and conditions relate to the premises hereinbefore assigned unto the said [C. D.].

[A. B.] assigns to [C. D.] his share in the premises;

subject to a moiety of the rent, and to covenants.

2. In further pursuance of the said agreement, and in consideration of the assignment hereinbefore contained, the said [C. B.] hereby as beneficial owner assigns and releases unto the said [A. B.], ALL THAT the equal undivided third part or share, or other the part, share, or interest, of him the said [C. D.] of and in all that messuage [*describe parcels allotted to* [A. B.]], being the remainder of the premises comprised in the said lease; TO HOLD the same unto the said [A. B.] henceforth for the resi-

[C.D.] assigns to [A. B.] his share in the premises;

V. OF LEASEHOLDS HELD UNDER ONE LEASE.

due now unexpired of the said term of ninety-nine years, SUBJECT to the payment of the said apportioned yearly rent of 7*l.* 9*s.*, and also of the said increased rent of 50*l.*, in case the same shall become payable, and so far as the payment of the same shall be occasioned by the said [A. B.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of the covenants and conditions contained in the said lease, on the part of the lessee to be observed and performed, so far as such covenants and conditions relate to the premises, hereinbefore secondly described and assigned unto the said [A. B.].

subject to a moiety of the rent, and to covenants.

Mutual covenants by parties to pay rents, &c. in respect of premises allotted to them respectively.

3. Each of them, the said [A. B.] and [C. D.], hereby for himself and his assigns, covenants with the other of them that they, the covenanting parties respectively, and their respective executors, administrators, and assigns, will, during the unexpired residue of the said term, duly pay the apportioned parts hereby made payable by them respectively of the said rent, reserved by the said lease as and when the same shall become payable thereunder, and will also perform and observe the covenants and conditions contained in the said lease, and on the part of the lessees to be performed and observed so far as such covenants and conditions relate to the hereditaments and premises hereby assigned to them the said covenanting parties respectively; and will indemnify and, at all times, keep indemnified the other of them, the said covenanting parties, and his executors, administrators, and assigns, and his estate and effects, against all actions and proceedings, costs, expenses, damages, claims, and demands whatsoever, by reason or on account of the non-payment of the apportioned part hereby made payable by him, the said covenanting party, his executors, administrators, and assigns, of the said rent reserved by the said lease, or by reason or on account of the breach, non-performance, or non-observance of any of the covenants and conditions contained in the said lease, so far as the same are to be performed and observed by him, the said covenanting party, his executors, administrators, or assigns; And further, that all sums of money, costs, charges, or expenses which may be incurred by such other party, his executors, administrators, or assigns, by reason or on account of any such non-payment, breach, non-performance, or non-observance as aforesaid, may be recovered by him or them by entry upon and receipt of the rents and profits of the hereditaments and premises hereby assigned to the said

Mutual powers of distress.

covenanting party, until by means thereof, or otherwise, all such sums of money, costs, charges, and expenses, including all costs, charges, and expenses of and incident to such entry shall have been fully paid and satisfied. V. OF LEASEHOLDS HELD UNDER ONE LEASE.

4. The said [A. B.] hereby acknowledges the right of the said [C. D.] to production of the hereinbefore recited lease of the —— day of ——, 19—, and to delivery of copies thereof, and undertakes for the safe custody thereof. Acknowledgment and undertaking as to lease.

In witness, &c.

VI. CONVEYANCE *in* Pursuance *of an* Order *of the* Court *for* Effecting *a* Partition *by the* Absolute Owner *of* Five Undivided Sixth Parts, *and a* Married Woman, Tenant *for* Life *for her* Separate Use *under a* Marriage Settlement *of the* Remaining Sixth, *a* Sum *of* Money *being paid for* Equality *of* Partition.

THIS INDENTURE (*p*), made the —— day of ——, 19—, Between [A.], of, &c., of the first part; [B.], the wife of [W.], of, &c., of the second part; [G.], of, &c., and [H.], of, &c., of the third part (*q*); and [*grantee to uses*], of, &c., of the fourth part: Parties.

Whereas, by an indenture of settlement, dated the —— day of ——, 19—, and made between [R.], of the first part; [S.], of the second part; and [O.] and [P.], of the third part (being the settlement executed previously to the marriage of the said [R.] and [S.], the father and mother of the said [A.] and [B.]), the lands and hereditaments hereinafter described, were conveyed and assured unto and to the use of the said [R.] and [S.] successively, during Recitals: of settlement;

(*p*) Stamp, 10*s.*, and *ad valorem* as on a conveyance on sale in respect of the equality money, if exceeding 100*l.*: see Preliminary Note, *ante*, p. 220.

(*q*) The trustees are made parties for the purpose of acknowledging the receipt of the money paid to them for equality of partition; if no such payment is made they need not be made parties to the deed, as even an equitable tenant for life can exercise his statutory power of partition (like his other powers under the Settled Land Acts) and pass the legal estate without their concurrence (see sect. 58 (ix.) of the Act of 1882), provided he gives to them and their solicitors due notice of his intention to exercise the power.

VI. CONVEYANCE ON PARTITION BY COURT.

their respective lives, and, after the decease of the survivor of them, to the use of all and every the child and children of the said [R.] and [S.], his, her, and their heirs and assigns, and, if more than one, as tenants in common: AND WHEREAS there were issue of the said marriage six children, namely, the said [A.] and [B.], and four other children, [C.], [D.], [E.], and [F.], who died in their infancy; AND WHEREAS the said [R.] and [S.] are respectively long since deceased; AND WHEREAS the four respective undivided sixth parts or shares of the said [C.], [D.], [E.], and [F.], of and in the hereditaments so settled by the hereinbefore recited indenture, descended, at their respective deceases, to the said [A.], as their eldest brother and heir-at-law; AND WHEREAS, by an indenture of settlement, dated the —— day of ——, 19—, and being made between the said [W.], of the first part; the said [B.], of the second part; and the said [G.] and [H.], of the third part (being the settlement executed previously to the marriage of the said [W.] and [B.]), ALL THAT the one undivided sixth part or share of her the said [B.] of and in the lands and hereditaments comprised in the hereinbefore recited indenture, and hereinafter described, was conveyed unto and to the use of the said [G.] and [H.], their heirs and assigns, in trust for the said [B.] during her life for her separate use, with remainders over; AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, dated the —— day of ——, 19—, and made by Mr. Justice —, in an action in which the said [A.] was plaintiff, and [*defendants*] were defendants, it was ordered that an inquiry be made who were the parties respectively entitled to the premises in the pleadings mentioned, and for what estates and interests respectively, and that a partition should be made of the same into as many parts as the same should be certified to be divisible into, and that such shares be allotted to the parties to whom the same should be certified to belong, in such shares and for such estates and interest as should be certified; AND WHEREAS by the certificate of one of the Masters attached to the Chambers of Mr. Justice ——, dated the —— day of ——, 19—, and made in the said action, and filed on the same day, it was certified that the plaintiff was entitled to five undivided sixth parts or shares in fee simple in the said hereditaments; AND THAT the said defendant [B.] was entitled to the remaining undivided sixth part during her life, with divers remainders over, under the said indenture of settlement of the ——

as to issue of the marriage;

of death of [R.] and [S.];

of the death of four of the children, whose shares descended to [A.];

of settlement affecting the undivided share of one of the parties;

of order for partition;

of certificate as to title;

VI. CONVEYANCE ON PARTITION BY COURT.

day of ——, 19—; AND WHEREAS [Q.], of, &c., the land agent and surveyor, appointed in that behalf by the said judge, by his report dated the —— day of ——, 19—, and filed in the said action on the —— day of ——, 19—, certified and reported that the best and most proper mode of effecting such partition as aforesaid, was that the lands and hereditaments described in the first schedule to the said report should be allotted to the said [A.], the plaintiff, and his heirs in severalty, as and for his part or share of the premises in the pleadings mentioned; AND THAT the lands and hereditaments described in the second schedule to the said report, should be allotted unto the said defendant [B.] for her life with remainders over as aforesaid; AND for equality of partition between the said respective parties, that the said [A.] should pay to the said [G.] and [H.], as the trustees of the hereinbefore recited settlement of the —— day of ——, 19—, the sum of £——; AND he moreover certified that he had delineated the said lands in a certain plan to the certificate annexed, wherein the lands allotted to the said [A.], the plaintiff, were marked with a red colour, and the lands allotted to the said defendant [B.] were marked with a green colour; AND WHEREAS the said Master by his certificate dated, &c. [*ut supra*], certified that the partition directed to be made by the said order of the —— day of ——, 19—, was to be carried out according to the said report of the said [Q.], and the said plan thereto annexed, which report and plan were filed with the certificate now in recital, and that the lands and hereditaments described in the first schedule to the said report, and coloured red on the said plan (being the lands and hereditaments described in the first schedule hereto), had been allotted to the said [A.], the plaintiff, and that the lands and hereditaments described in the second schedule to the said report, and coloured green in the said plan (being the lands and hereditaments described in the second schedule hereto), had been allotted to the said defendant [B.], and that the said [A.], the plaintiff, was to pay to the said [G.] and [H.], as such trustees as aforesaid, the sum of £—— for equality of partition; AND WHEREAS the several parties hereto of the first three parts are desirous to complete the said partition, and to carry the same into effect in manner hereinafter appearing; AND WHEREAS the several deeds and documents of title specified in the third schedule hereto relate to the lands and hereditaments described in the first schedule hereto, as well as to

of appointment of surveyor;

of report of surveyor;

of certificate confirming report;

of desire to complete partition;

of agreement as to title-deeds, &c.;

VI. CONVEYANCE ON PARTITION BY COURT.

the lands and hereditaments comprised in the second schedule hereto, and it has accordingly been agreed that the possession of the same deeds and documents shall be retained by the said [A.], and that he shall give such acknowledgment and undertaking with regard to the same as are hereinafter contained; AND WHEREAS these presents have been settled by the said judge, as appears by the certificate of the said Master, dated the —— day of ——, 19—; AND WHEREAS the said [A.], by the direction of the said [B.], has this day paid to the said [G.] and [H.], as the trustees of the hereinbefore recited settlement of the —— day of ——, 19—, the sum of £—— for equality of partition, to be held by them as capital money arising under the Settled Land Acts (the receipt of which sum the said [G.] and [H.] hereby acknowledge).

of conveyance having been settled by the judge;

of payment of money to trustees of settlement for equality of partition.

Testatum. NOW THIS INDENTURE WITNESSETH as follows:—

1. For effectuating the said partition, and in obedience to the said order of the —— day of ——, 19—, and in consideration of the premises, the said [A.], as to the five equal undivided sixth parts or shares to which he is so entitled as aforesaid, hereby, as beneficial owner, grants; AND the said [B.], as to the one remaining equal undivided sixth part or share comprised in the hereinbefore recited indenture of settlement, in exercise of the power in this behalf conferred on her by the Settled Land Acts, 1882 to 1890, and of every other power or authority (if any) her hereunto enabling, as beneficial owner, appoints and grants unto the said [*grantee to uses*] and his heirs, ALL the several messuages, lands, and hereditaments [*describe parcels by reference to schedules*, ut ante, *p.* 228]; TO HOLD the premises unto the said [*grantee to uses*], his heirs and assigns, as to the messuages, lands, and hereditaments described in the first schedule hereto to the use of the said [A.], his heirs and assigns; AND as to the messuages, lands, and hereditaments described in the second schedule hereto, to such uses, upon such trusts, and under and subject to such powers, provisoes, and declarations as are expressed and declared in and by the hereinbefore recited indenture of settlement concerning the one undivided equal sixth part or share therein comprised of and in the hereditaments hereinbefore described, or to, upon, under, and subject to such of the same uses, trusts, powers, provisoes, and declarations as are now subsisting and capable of taking effect.

2. The said [A. B.] hereby acknowledges the right of the said [G.] and [H.] to production of the deeds and documents mentioned

in the third schedule hereto, and to delivery of copies thereof, and undertakes for the safe custody thereof. VI. CONVEYANCE ON PARTITION BY COURT.

In witness, &c.

Three Schedules.

VII. AGREEMENT *for* Partition *of* Freeholds *by two* Arbitrators *to be carried into effect by the* Board *of* Agriculture *and* Fisheries (*r*).

AGREEMENT (*rr*), made this —— day of ——, 19—, Between [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part. Parties.

Whereas the said [A. B.] and [C. D.] are absolutely entitled to the hereditaments described in the schedule hereto for an estate in fee simple in possession in equal shares as tenants in common; Recitals. Title.

And whereas the said [A. B.] and [C. D.] desire to effect a partition of the said hereditaments in manner hereinafter appearing. Agreement.

NOW IT IS HEREBY AGREED as follows:—

1. A partition of the said hereditaments into two several allotments convenient to be held in severalty, and as nearly as may be of equal value, shall be made by [*arbitrator*], of, &c., and [*arbitrator*], of, &c. (hereinafter called "the arbitrators"), who shall determine what sums (if any) shall be paid by either of the parties hereto to the other party for equality of partition. Partition to be made.

2. All necessary or proper surveys and valuations, maps, plans, and schedules shall be taken and made by the arbitrators. Surveys and plans.

3. The arbitrators, having made such partition as aforesaid, shall decide and in their award direct which allotments shall be taken by each of the parties hereto, and the allotments shall be appropriated accordingly. Allotment to parties.

4. When the arbitrators shall have made their award and appropriation, the parties hereto shall forthwith apply to the Board Application to the Board.

(*r*) As to partitions under the Board of Agriculture, see Preliminary Note, *ante*, p. 219; and see 11 & 12 Vict. c. 99 (Commons Inclosure Act Amendment), ss. 14 and 15; and see also the Inclosure Acts, 1849, 1854, 1857 and 1859. The order of the Board is not conclusive against persons not parties to the arbitration: see *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.

(*rr*) Stamp, 6*d*.

VIII. FOR PARTITION OF FREEHOLDS BY TWO ARBITRATORS.

of Agriculture and Fisheries for an order of partition for the purpose of carrying the partition into effect.

Costs.

5. The costs of this agreement, and of the application to the said Board, and the remuneration of the arbitrators, and all other costs and expenses of and incidental to carrying the said partition into effect shall be borne by the parties hereto in equal shares.

Decision of the arbitrators to be final.

6. The decision of the arbitrators shall bind all parties and in case of difference between the arbitrators, such difference shall be referred to an umpire to be chosen by them before entering on the arbitration, and his decision shall be final.

Appointment of new arbitrator in place of arbitrator dying, &c.

7. The said [A. B.] may, if and when the said [*first named arbitrator*], or any other arbitrator appointed by the said [A. B.] under this clause, shall die, or refuse, or become incapable to act, appoint another arbitrator in his place; AND in like manner the said [C. D.] may, if and when the said [*second named arbitrator*], or any other arbitrator appointed by the said [C. D.] under this clause, shall die, or refuse, or become incapable to act, appoint another arbitrator in his place, and every arbitrator so appointed shall have the same powers and authorities as if he had been originally appointed.

IN WITNESS, &c.

PARTNERSHIP.

PRELIMINARY NOTE.

Limited partnership.

THE law of partnership was codified by the Partnership Act, 1890, and has been modified in the case of limited partnerships by the Limited Partnerships Act, 1907, which, in the case of partnerships formed under that Act, created two classes of partnerships: (1) "general partners," who carry on the business, and are liable for its debts and obligations; and (2) "limited partners," who contribute to the capital, but take no part in the management (sect. 6), and are not liable beyond the amount so contributed: Limited Partnerships Act, 1907, s. 4. Limited partnerships are restricted by the Act (sect. 4 (2)) to ten persons in the case of banks, and to twenty persons in the case of other partnerships.

A limited partner must not withdraw his contribution during the continuance of the partnership: sect. 4 (3). A limited partnership must be registered: sect. 5. Sect. 7 of the same Act provides that, subject to the provisions of the Act, the rules of equity and common law applicable to partnerships so far as they are not inconsistent with the Partnership Act, 1890, shall apply to limited partnerships. A body corporate may be a limited partner: sect. 4 (4).

A precedent of articles of a limited partnership under the Act of 1907 is given (see Precedent III., *post*, p. 259), as it may be useful on occasions; but it is understood that the Act is very little used, it being found more satisfactory to have recourse to the provisions of the Companies Act, 1908, as to the formation of private companies whereby the liability of the members is limited to their shares.

As to what constitutes a partnership, see *Cox* v. *Hickman*, 8 H. L. C. 268; *Syers* v. *Syers*, 1 App. Cas. 174; *Ex parte Sheil*, 4 Ch. D. 789; *Pooley* v. *Driver*, 5 Ch. D. 458; *Ex parte Tennant*, 6 Ch. D. 303; *Ex parte Delhasse*, 7 Ch. D. 511; *Walker* v. *Hirsch*, 27 Ch. D. 460; *Re Stone*, 33 Ch. D. 541; *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238; *Davis* v. *Davis*, [1894] 1 Ch. 393.

See generally as to the law of partnership: Lindley on Partnership; Pollock on Partnership; and Elph. Introd. 297.

Stamps.

A partnership deed requires a 10*s*. deed stamp, and also an *ad valorem* stamp of 20*s*. per 100*l*. on any money paid by way of premium or for the purchase of a share in the business. The same *ad valorem* duty is payable on the value of the capital voluntarily transferred by a father to a son by articles of partnership when such transfer practically amounts to an advancement: see sect. 74 of the Finance (1909-10) Act, 1910. And if the articles include provisions for a partner's widow or family on his decease, thus constituting a trust in their favour, it is apprehended that the articles will require stamping with an *ad valorem* stamp on the value of the capital or share affected by such provisions: sect. 74 of the Finance (1909-10) Act, 1910. Such a provision differs from a power to charge an annuity or to introduce a son, which powers are merely contracts between the parties, and do not charge the partnership assets, hence would probably not be chargeable with the *ad valorem* duty. But in any case the stamp should be adjudicated: see sect. 74 (2).

I. ARTICLES OF PARTNERSHIP BETWEEN TWO TRADERS (CONCISE FORM).

PRECEDENTS.

I. ARTICLES *of* PARTNERSHIP *between* TWO TRADERS (*a* CONCISE FORM, *relying on the Partnership Act*, 1890).

THIS INDENTURE (*a*), made the —— day of ——, BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part; WITNESSETH that the said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

Parties.

Form and duration of partnership.

1. The parties shall become and be partners under the firm of "[B. & D.]," in the business of ——, for —— years from the —— day of ——, or until the expiration of —— months' notice in writing to determine the partnership (*b*), left by either partner for the other at their place of business, at any time after the —— day of ——.

Place of business.

2. The business of the firm shall be carried on at No. —, in —— Street, or such other place as the partners shall hereafter agree on.

Capital to be contributed.

3. The capital of the partnership shall be the sum of £——, to be contributed by the said [A. B.] and [C. D.] in equal shares, and to be credited as belonging to them in equal shares in the books of the partnership.

Expenses.

4. The rent, and all taxes, rates, repairs, alterations, improvements, and outgoings, in respect of the said messuage and shop, or other partnership place of business for the time being, or of the business, and all wages and salaries of all persons employed in or about the partnership business, and all insurances, including insurances under the Workmen's Compensation Act, 1906, and the employers' share of the costs arising out of the National Health Insurance Act and amending Acts, if any, shall be paid out of the profits, or in case of deficiency of profits, then by the partners equally.

Relative shares.

5. The profits and losses shall belong to and be borne by the said [A. B.] and [C. D.] in equal shares, and the profits, if any, shall be divisible immediately after the signing of the general account hereinafter mentioned.

(*a*) Stamp, 10*s.*: see *ante*, p. 241.

(*b*) For forms of notice to determine partnership, see Notices, Precedents XX., XXI. and XXII., *ante*, pp. 213, 214.

6. The said [A. B.] may draw out of the profits, sums not exceeding £—— in each month; and the said [C. D.] may draw out of the profits, sums not exceeding £—— in each month, but if in any year the amount so drawn out by either partner shall, after the yearly balance shall have been taken, be found to be in excess of the sum which such partner so drawing is entitled to thereunder out of the net profits, he shall thereupon refund the difference between the amount so drawn out by him as aforesaid and his share in the net profits. Monthly drafts.

7. The said [A. B.], by whom the said messuage or shop and premises in which the business is carried on are held during the residue of a term of —— years from the —— day of ——, granted by a lease dated, &c., at a rent of £——, shall hold the premises in trust for the partnership; and shall be indemnified by the partnership from the said rent, and from the lessee's covenants and conditions of the lease; and shall be credited in the partnership books with the sum of £—— (being the agreed value of the lease), as part of his contribution to capital (*c*). Rent of house. Lease of partnership premises.

8. No [apprentice] clerk, or servant, shall be taken, employed, or dismissed, without the consent of both partners. Servants, &c.

9. Each partner shall devote the whole of his time and attention to the best advantage of the partnership business [and shall be entitled to take —— clear weeks' holiday in every year, at such time or times as may be mutually agreed upon by the said [A. B.] and [C. D.].] Attention to business.

10. Neither partner shall purchase goods to an amount exceeding £—— without the previous consent of the other in writing. Restriction on purchases.

11. Either partner dealing with, or giving credit of goods or money to, any person after the request to the contrary by the other, shall immediately pay to the other the full value or amount of such goods or money as liquidated damages. Not to give credit.

12. Neither partner shall, without the consent in writing of the other, compound, release, or discharge any debt owing to the partnership or otherwise discharge or diminish any security to the partnership without receiving the full amount thereof, or engage the partnership name on any negotiable or other security, or for any debt, otherwise than in the usual course of business, or make Not to release debts, or incur liabilities.

(*c*) For a different arrangement with regard to the business premises, see Precedent II., cl. 10, *post*, p. 250; and see *ibid.* note (*m*).

I. ARTICLES OF PARTNERSHIP BETWEEN TWO TRADERS (CONCISE FORM).

himself liable as bail or surety for any person, or a corporation, or on any accommodation bill or note or policy of insurance, or enter into any wagering contract, or (without the consent of the other partner) make any assignment, either absolutely or by way of mortgage or declaration of trust, of his share or interest in the partnership, or any part thereof, or withdraw his share in the capital, or expose the partnership effects to the danger of being taken in execution [or be concerned out of the partnership in the business of ——].

Bankers' cheques.

13. The firm shall bank with ——, or such other bankers as the partners shall from time to time mutually agree upon, and all cheques, moneys, and other securities belonging to the firm other than such moneys as are required for current expenses, shall be paid into or deposited with the said bank, and all cheques exceeding £——, bills, and other documents drawn for the purposes of the said business shall be signed by both the partners.

Apprentice fees, &c.

14. All premiums and fees taken with apprentices, or the like, shall be part of the profits.

Books of account.

15. The partners respectively shall cause all accounts and entries usual in a business of a similar nature to be kept and made in proper books; And all securities and vouchers shall be kept at the place of business, or at the bankers of the partnership, and be open to the inspection of each partner or his agent (*d*).

Annual account.

16. On the —— day of ——, and on the same day in every subsequent year, the partners shall either themselves, or by some person or persons engaged in a like business, take a general account and a just valuation of the assets and liabilities of the partnership, and of all other matters and things generally entered in accounts of a like nature, and such general account shall be prepared and audited by such chartered accountant as the partners shall from time to time mutually appoint, and shall be entered in a book and signed by the partners, and when so signed the entries in such book shall be conclusive, save that if within six months from the date of the signing of such book any manifest error shall be found therein, such error shall, at the request of either partner, be rectified.

(*d*) By the Partnership Act, 1890, s. 24 (9), the books are to be kept at the principal place of business, and each partner or his agent has the right of inspection, subject to any agreement to the contrary: see *Bevan* v. *Webb*, [1901] 2 Ch. 59, followed in *Norey* v. *Keep*, [1909] 1 Ch. 561.

17. The partnership shall, upon dissolution by effluxion of time or otherwise, be wound up, and the assets and liabilities dealt with in accordance with the provisions applicable thereto contained in the Partnership Act, 1890.

Winding-up by reference to Partnership Act, 1890, ss. 39 & 44.

18. If either partner shall infringe any of the clauses numbered 8, 10, 11, 12, 13, and 15 respectively, or become insane, or enter into any arrangement or composition for the benefit of his creditors, the other partner may forthwith determine the partnership by notice in writing, left at the place of business, and may thenceforth continue the business alone, and may advertise notice of the dissolution in the *London Gazette*, and if necessary, sign the name of the infringing partner to such notice of dissolution (*e*).

Power of expulsion.

Option to surviving partner to purchase deceased partner's share.

19. Upon the dissolution of the partnership by the death of either partner, the surviving partner, or in case of dissolution by notice under clause 18 hereof, the partner giving such notice shall have the option of purchasing, at a fair value [*or*, at a valuation to be made by arbitrators or their umpire as hereinafter mentioned] as from the date of dissolution, such dying or outgoing partner's share of the net assets and effects of the partnership, including therein the goodwill of the business, such option to be exercised in writing within —— calendar months from the date of the dissolution.

Proviso for purchase of deceased or retiring partner's share.

20. In the event of the purchase of a deceased or outgoing partner's share under the last preceding clause the following provisions shall take effect:—

(1) The purchase-money shall be paid by three equal instalments at the respective periods of six, twelve, and eighteen calendar months from the date of the dissolution.

(2) The payment of such instalments, with interest at the rate of 4 per centum per annum (*f*), for so much of the purchase-money as shall for the time being remain unpaid at the date of payment of

(*e*) As to the jurisdiction of the Court to order the advertisement of a dissolution, where the partnership is dissolved by consent, see *Hendry* v. *Turner*, 32 Ch. D. 355. As to the power of expulsion, see P. Act, 1890, s. 25; *Green* v. *Howell*, [1910] 1 Ch. 495; and as to professional misconduct, see *Clifford* v. *Timms*, [1908] A. C. 12; *Re A Solicitor*, [1912] 1 K. B. 302.

(*f*) In the absence of express stipulation interest is not generally payable on the share of a partner after dissolution: *Barfield* v. *Loughborough*, L. R. 8 Ch. 1.

I. ARTICLES OF PARTNERSHIP BETWEEN TWO TRADERS (CONCISE FORM).

each such instalment (*g*), and also the indemnity of the retiring partner, or of the executors or administrators of the deceased partner, shall be secured by the purchaser's bond or a floating charge on the assets of the said business.

(3) The retiring partner or his representatives shall execute all such deeds and documents, and perform all such acts as may be necessary to vest the partnership property, including the goodwill, in the partner so exercising the said option as aforesaid at the date of the dissolution [and shall not carry on or be engaged in the business of ——, either directly or otherwise, during the remainder of the said partnership term].

(4) If the said [B.] shall be the purchaser, he may, at his option, cause the lease of the said messuage at —— to be included in such valuation and purchase.

21. All notices authorised or required to be given to either partner hereunder shall be deemed to be duly served if deposited, addressed to such partner, at the counting-house or office of the partnership.

Arbitration clause (*gg*).

22. If at any time any dispute, doubt, or question shall arise between the said partners, or their respective executors or administrators, either on the construction, meaning, or effect of these presents, or respecting the accounts, transactions, profits, or losses of the business, or otherwise in relation to the partnership, or the dissolution or winding-up thereof (*ggg*), then every such dispute, doubt, or question shall be referred to two arbitrators, one to be appointed by each party or their umpire pursuant to the Arbitration Act, 1889, or any statutory modification thereof for the time being subsisting.

In witness, &c.

(*g*) It should appear clearly that interest is to be payable on the unpaid balance, and not only on the amount of each instalment: see *Orr Ewing* v. *Orr Ewing*, 8 App. Ca. 822.

(*gg*) This will not bind a mortgagee of a partner's share: *Bonnin* v. *Neame*, [1910] 1 Ch. 732.

(*ggg*) See *Vawdrey* v. *Simpson*, [1896] 1 Ch. 166.

II. ARTICLES OF PARTNERSHIP *between* THREE TRADERS, *with* ORDINARY CLAUSES.

II. ARTICLES OF PARTNERSHIP BETWEEN THREE TRADERS (COMMON FORM).

THIS INDENTURE (*h*), made the —— day of ——, BETWEEN [A. B.], of, &c., of the first part, [C. D.], of, &c., of the second part, and [E. F.], of, &c., of the third part: WITNESSETH that each of them, the said [A. B.], [C. D.], and [E. F.] (so far as the covenants, stipulations, and provisions hereinafter contained are to be observed and performed by him, his executors or administrators), hereby covenants with the others of them jointly and severally in manner following, that is to say:—

Parties.

Testatum.

Mutual covenants.

1. The said [A. B.], [C. D.], and [E. F.] shall become and henceforth continue partners in the trade or business of ——, for the term of —— years from the date of these presents, if the said partners or any two of them shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

Business and duration of partnership.

2. The said business shall be carried on under the style or firm of "[B.] and [Co.]," in the messuage belonging to the said [A. B.], in —— Street, in the city of ——, or in such other place of business as the said partners shall from time to time agree upon.

Style of firm, and place of business.

3. If on or at any time after the —— day of ——, any partner shall be desirous of retiring from the partnership, he shall be at liberty to give to the other partners or partner, or to leave for them or him at the place where the business shall for the time being be carried on, notice in writing of his intention to retire therefrom (*i*); and at the expiration of six calendar months after the giving or leaving of such notice, the partner giving such notice shall cease to be a partner, subject nevertheless to the provisions contained in clause 23 of these presents.

Power to determine partnership by notice.

4. If any of the said partners shall at any time become insane, or insolvent (*k*), or make or enter into any arrangement or

Power of expulsion.

(*h*) Stamp, see *ante*, p. 241.

(*i*) For form of notice determining partnership, see *ante*, p. 214.

(*k*) Bankruptcy *ipso facto* determines a partnership. Insolvency in a clause of this nature includes inability to meet current liabilities, even though the person might be able to discharge his liabilities in full if his assets were all got in and realised: see *Bayley* v. *Schofield*, 1 M. & S. 338; *Biddlecombe* v. *Bond*, 4 A. & E. 332.

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composition with his creditors, or shall knowingly do, permit, or omit any act or thing contrary to any of the covenants, stipulations, and provisions herein contained, or if he shall (except with the consent of the other partners or partner, or by reason of sickness or physical injury), absent himself from business for more than —— days at any one time, or more than —— days in any one year, or if he shall become addicted to gambling or speculation, whether on the Stock Exchange or otherwise, or if by his mode of living, whether by intemperance or immorality or otherwise, he shall, in the opinion of the other partners or partner, bring discredit, whether directly or indirectly, upon the partnership business: Then, and in any of the said cases, the other partners or partner, if they or he shall think fit, shall be at liberty to give to the insane partner, or his committee, or to the partner who shall offend in any of the particulars aforesaid (as the case may require), or leave at the place where the business shall for the time being be carried on, a notice in writing expelling him from the partnership: And the partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for the purpose, determine accordingly as regards the partner to or for whom such notice shall be given or left, subject nevertheless to the provisions contained in clause 23 of these presents, and also subject and without prejudice to the remedies of the respective partners for the breach or non-observance or non-performance of all or any of the covenants, stipulations, and provisions herein contained [and the powers of a partner so expelled in relation to his sons, so far as not exercised in manner hereinafter provided, shall cease].

Advertisement of dissolution.

5. If the partnership shall be determined by notice under either of the preceding articles, the partner giving such notice shall be at liberty to cause a proper notice of the dissolution of the said partnership to be advertised in the *London Gazette*, and may, if necessary, sign the name of the partner to whom the said notice shall have been given to such advertisement or notice of dissolution.

Capital.

6. The capital of the partnership shall be the sum of £——, to be contributed by and be credited in the books of the firm as belonging to the said partners in the following proportions, namely, the sum of £——, being two-fourths thereof, by and to the said [A. B.]; the sum of £——, being one other fourth thereof, by and to the said [C. D.]; and the sum of £——, being the re-

maining fourth thereof, by and to the said [E. F.] (*l*): And each contribution (save as hereinafter provided) shall be paid in cash into the —— Bank, Limited, to the account of the partnership on or before the —— day of —— next.

7. If at any time hereafter it shall be determined [by a majority of the partners] to increase the capital, the additional capital shall, unless otherwise agreed, be contributed by the partners in the proportions in which they are for the time being entitled to the net profits of the business. And each partner shall be credited in the books of the business with the further amount so contributed by him.

Increase of capital.

8. Each partner shall be credited in the books of the business with interest at the rate of 5 per cent. per annum on his share of the capital, inclusive of any additional capital brought in by him as aforesaid, such interest to be paid in each year before division of profits.

Interest on capital.

(*l*) Usually, a definite sum is advanced by the partners at the time of entering into partnership. It also frequently happens that the stock in trade, &c. requisite for carrying on the trade is purchased of one of the partners. In such case, to the last part of clause in the text, add the following:—

"Out of the said sum of £—— the sum of £—— shall be forthwith paid to [A.], as and for the price or purchase-money of the stock in trade and fixtures heretofore used by him in his said trade or business of a ——, carried on in the said messuage, in —— Street aforesaid, and which stock in trade and fixtures shall be purchased by the partnership at the price aforesaid; and the partners shall be entitled to and interested in the said capital, stock in trade, and fixtures, in the proportions aforesaid."

Stock in trade, &c. to be paid for.

If the stock in trade, &c. belonging to one of the partners is to be taken over as part of the capital contributed by such partner, then insert the following clause:—

"The stock in trade and plant belonging to the business heretofore carried on by the said [A. B.], the particulars whereof are entered in the books of the partnership, shall become the property of the partnership, and shall be taken over by the firm at a valuation to be made by a competent valuer, and the value thereof shall be treated as part of the capital to be contributed by the said [A. B.], and be deducted from the amount to be paid by him into the said bank as aforesaid."

Stock in trade, &c. to be taken at a valuation.

II. ARTICLES OF PARTNERSHIP BETWEEN THREE TRADERS (COMMON FORM).

9. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said [A. B.] to two fourth parts; the said [C. D.] to one other fourth part; and the said [E. F.] to the remaining one-fourth part thereof: AND the net profits shall be divided between the partners immediately after the settlement of the general annual account in each year.

Respective proportions of profits (*ll*).

Payment to one partner for rent.

10. The said [A. B.] shall be allowed by the partnership the clear yearly sum of £——, by way of rent for the said messuage in —— Street aforesaid, so long as the said business shall be carried on therein; but the said messuage shall continue the sole property of the said [A. B.], subject only to the right of the partnership to use the same for the purposes of the partnership business (*m*) so long as the business shall be carried on therein.

Expenses of partnership to be charged against revenue.

11. All rent [including the said rent of £——] [expenses of repairs, alterations, and improvements], taxes, rates, assessments, and other outgoings which shall become payable in respect of the messuage wherein the said business shall from time to time be carried on, the costs of insuring the same and the stock in trade and fixtures belonging to the partnership from loss or damage by fire, the salaries and wages of clerks, porters, and

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(*ll*) As to what are "profits," see *Re Spanish Prospecting Co.*, [1911] 1 Ch. 92; Lindley, 8th ed. 458.

(*m*) Add, if so intended,

That one of the partners may occupy part of the house in which the business is carried on.

"AND the said [A. B.] shall be at liberty, if he shall think proper, to use and occupy all such part of the said messuage as is not used in, or wanted for the purposes of, the partnership business, for the residence of himself and his family, without paying any rent or taxes for the same."

Or, if so intended,

"at the yearly rent of £——, to be paid or allowed by him to the partnership, in equal half-yearly portions, or proportionally for any less period, during the time of such occupation; but the said [A. B.] shall not be required to pay any proportion of the taxes in respect of his said occupation, and shall be at liberty to quit and leave the said premises, if he shall think proper, without any previous notice."

See also another arrangement as to the business premises, *ante*, Precedent I., cl. 7, p. 243.

servants to be employed in the said business, and all insurances of such persons to be paid by the employer, whether under the Workmen's Compensation Act, 1906, or otherwise, and travelling expenses, and the interest on the capital payable to the respective partners, and all other disbursements and expenses, losses and damages incurred in the course of the said business, shall be charged against revenue in the profit and loss account of the said business, and in case of a deficiency appearing in that account upon taking any general annual account, such deficiency shall be refunded to capital by the said partners in the proportions in which they shall be respectively entitled to the net profits of the business, and until refunded shall be debited in their respective capital accounts with the firm.

Apprenticeship fees and emoluments of appointments to be treated as profits.

12. All premium and apprentice fees to be paid with any apprentice or other person, and all other fees, emoluments, and benefits received by the partners, or any of them, while members or a member of the firm, for services rendered or otherwise, in respect of any office of profit or appointment held by them or him, shall be treated and accounted for in the books of the business as profits of the partnership.

As to bankers, and drawing cheques.

13. The bankers of the partnership shall be the —— Bank, or such other bankers as the partners shall from time to time agree upon; and all partnership moneys (not required for current expenses) shall be paid into the account of the firm at the said bank by the end of every week. Each partner shall be at liberty to draw on the partnership account, but only for the purposes of the partnership, or for the purposes mentioned in the next clause hereof, and only by drafts or cheques upon such bankers in the firm name (*n*).

Sums to be drawn out monthly.

14. The partners shall be at liberty to draw out of the said business, in anticipation of their respective shares of profits, any sum or sums not exceeding the sums following, that is to say: the said [A. B.] the sum of £—— per month; the said [C. D.] the sum of £—— per month; and the said [E. F.] the sum of £—— per month; such sums to be accounted for on taking the next

(*n*) If so desired, instead of the words "each partner" to the end of this clause, say,

"All cheques, bills, and other writings pledging the credit of the firm shall be signed by the said —— and ——, and not otherwise."

II. ARTICLES OF PARTNERSHIP BETWEEN THREE TRADERS (COMMON FORM).

general annual account as hereinafter directed; and any partner whose drawings shall, on the taking of such account, be found to exceed his share of the net profits, shall forthwith refund the difference.

No apprentice, &c. to be taken by one partner without the consent of the other.

15. No apprentice, clerk, or servant shall be taken or engaged, or be employed in or about, or dismissed from, the said business, by any of the partners without the consent of the others of them (*o*).

To be faithful to each other, &c.

16. The partners shall be true and just to each other in all their transactions and dealings; and shall, at all times during the continuance of the partnership, diligently and faithfully employ themselves in the conduct and management of the said business, and the concerns of the partnership.

To give information.

17. Every partner shall forthwith inform the other partners of all letters, accounts, writings, proposals, matters and things, which shall have come into his hands or knowledge touching the partnership business.

18. No partner shall, during the continuance of the partnership, without the consent of the others or other of them:—

Not to engage in other business.

(1) Either separately or in partnership with any other person, engage in or carry on, or be concerned or interested, directly or indirectly, in the business of ——, otherwise than on account and for the benefit of the partnership, nor engage in or carry on any other trade or business, nor become nor be a director of any joint-stock company (*oo*).

Neither partner to give credit,

(2) Transact any business, or enter into any contract or agreement with, or give credit to, or lend or advance any money out of

(*o*) If desired, the following alternative form may be used:—

Either partner to hire or dismiss servants without consent of the other, except in case of special request to the contrary.

"Any partner [*or*, the said [C. D.]] shall be at liberty to hire or dismiss any clerk, traveller, workman, or servant, without the consent of the others [*or*, of the said [A. B.], or of any future partners or partner to be admitted as hereinafter provided], except in cases where at any time a request to the contrary shall be made by the other partners [*or*, by the said [A. B.], or such other partners or partner as aforesaid], in which excepted cases the consent of all the partners for the time being shall be necessary, and no apprentice shall be taken except with the consent and for the benefit of all the partners for the time being."

(*oo*) *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; *Chapman* v. *Westerby*, 58 Sol. J. 50.

the partnership funds to any person, company, or corporation, after he shall be requested by the other partners not to do the same.

&c., after notice from the other not to do so.

(3) Compound, release, or discharge any debt or duty which shall be due or owing to the partnership, without receiving the full amount thereof; nor sign any instrument whereby any debt or security shall be in anywise discharged, vacated, or diminished.

Nor, without consent of the other, compound debts, &c.

(4) Draw, accept, or sign any bill of exchange or promissory note, or contract any debt on account of the said partnership, or employ any of the moneys or effects of the partnership, or in any way pledge the credit thereof except in the usual and regular course of business.

Nor draw, &c., any bill, except in the regular course of business.

(5) Become bail, surety, or security for any person or persons (*p*) [or draw, indorse, or accept any accommodation bill or note, or underwrite any policy of insurance, or expose himself to any other risk or hazard in any gaming transaction] (*q*).

Nor become bail or surety, &c.

(6) Make any assignment, either absolutely or by way of mortgage, or any declaration of trust of his share or interest in the said partnership, or any part thereof, or withdraw his share of the capital therein, or any part thereof.

Nor assign his share (*qq*).

(7) Knowingly do or permit anything whereby the moneys or effects of the partnership shall be seized, attached, extended, or taken in execution.

Nor permit effects to be taken in execution.

(8) Introduce any person or persons into the said firm as a partner other than a son or a nephew.

19. The partners shall keep, or cause to be kept, proper books of account, wherein shall be entered all moneys received and paid, and all contracts entered into, and all business transacted on account of the partnership, and all other matters and things of which accounts ought to be kept, according to the usual and regular course of the said business, and which books of account together with all deeds, securities for money, letters, and papers belonging

To keep proper accounts, &c., which are to be open to the inspection of both partners.

(*p*) This prohibition is often found useful in affording partners a reason for refusing to become bail or surety.

(*q*) The clause within brackets is less frequently used than the stipulation not to become bail or surety. The principle of the objection, however, applicable to all such transactions, is the same; being, not that the offending partner directly brings any responsibility upon the firm by the acts in question, but that he exposes himself to risks, which might lead to a dissolution of the partnership, or be otherwise detrimental to its interests.

(*qq*) See P. Act, 1890, s. 31; *Watts* v. *Driscoll*, [1901] 1 Ch. 294; *Bonnin* v. *Neame*, [1910] 1 Ch. 732, as to the rights of an assignee of the share of a partner.

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to the partnership (except such as shall be kept with the bankers of the partnership), shall be kept at the place where the said business shall be carried on, and shall, at all reasonable times, be open to the inspection of all the partners (*r*).

General account to be annually taken.

20. On the —— day of ——, in every year during the partnership, a general account in writing shall be made and taken by the partners of all the moneys, credits, property, and effects, and of the debts and liabilities of the partnership; and of all business transacted on account of the partnership during the then preceding year, or in the case of the first of such accounts, since the commencement of the partnership, and of all other matters and things usually included in accounts of a like nature, and for the purpose of such account a proper valuation shall be made of all items requiring valuation. Such general account shall be properly audited by a competent chartered accountant to be agreed upon by the partners, and shall be entered in a book, to be signed by the partners; and after such signature, each of the partners shall be bound thereby, unless some manifest error shall appear therein within the space of —— calendar months next after the making up of such account, and be notified by any of the partners to the others of them within that time; and in such case only such error shall be rectified.

Provisions for the admittance of two of the sons of [A. B.] into the firm on their coming of age (*rr*).

21. If and when [F. B.] and [G. B.], two of the sons of the said [A. B.], shall respectively attain the age of twenty-one years, the said [A. B.] shall be at liberty to introduce them or either of them into the partnership, and at once or from time to time, by will or otherwise, to give to the son or sons whom he shall so introduce the whole or any part or parts of the share of him, the said [A. B.], in the partnership, but so nevertheless that whilst the said [A. B.] shall remain a member of the firm for the time being, he shall retain as his own share in the partnership at least one-third part of such share. AND FURTHER, that in case the said [A. B.] shall die before he has introduced a son into the partnership, or, having previously introduced a son, shall not by will or otherwise have given the whole of his share in the partnership to such son, the said [F. B.] and [G. B.] respectively, or such one of them as may not have been previously admitted, provided they or he signify their or his election within twelve calendar months after

In case [A. B.] shall die leaving no son or only one son in the firm.

(*r*) As to right of inspection, see note (*d*), p. 244, Precedent I.

(*rr*) As to these provisions, see *Byrne* v. *Reid*, [1902] 2 Ch. 735. For a precedent of a deed to carry out these provisions, see *post*, p. 277.

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their or his respectively attaining the age of twenty-one years, or after the death of the said [A. B.], whichever shall last happen, shall be entitled to be admitted partners or a partner in the partnership firm, as from the time of signifying such election, and to such a share as the said [A. B.], by will or otherwise, shall have prescribed, or in default thereof to such a share as will give the whole share of the said [A. B.] between them in equal shares, or in case only one of such sons shall so become a partner, then so as to give to such son the whole of the said share: And further, that after the death of the said [A. B.], whilst he may have only one son in the business, such son, subject to any contrary directions which shall have been given by the said [A. B.] by his will or otherwise, shall be entitled to the whole of his father's share in the meantime, and until it shall be ascertained that another son of the said [A. B.] will be admitted into the firm: And further, that if on the death of the said [A. B.] he shall have no son in the firm, and shall not by will or otherwise have signified his intention to exclude all his sons from being admitted into the partnership, his executors or administrators shall be entitled to his share of the profits of the said business, whilst the same shall be continued by his surviving partners, or any of them, and until it shall be ascertained whether a son of the said [A. B.] will be admitted into the firm for the time being, charged nevertheless with the payment of —— per cent. on the annual amount thereof, and so in proportion for any less period, by way of compensation, to such surviving partners or partner, for their trouble in realising the profits of the business, the said executors or administrators allowing the share of capital of the said [A. B.] to remain in the business for the same period: And further, that if the said [F. B.] shall die without having been admitted, or shall elect not to be admitted into the partnership, the said [A. B.] shall have power, by will or otherwise, to substitute another son, whose name in such case shall for all purposes be deemed to have been inserted in these presents, and in every subsequent document, if any, relating hereto, instead of the said [F. B.]; And each son who shall so be admitted a partner as aforesaid shall continue in the business until there shall cease to be any other member of the firm, or any other person entitled to become a member thereof; And further, that no son of the said [A. B.] shall be entitled to be admitted into the partnership until he shall have executed a deed of accession containing covenants on his part to observe all the stipulations of the

If [A. B.] shall die leaving no son in the firm, and without having signified his intention to exclude his sons from being admitted, provision as to carrying on the concern until the admittance of a son.

Power for [A. B.] by will to substitute another son for [F. B.].

No son to be admitted without executing a deed.

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partnership articles so far as applicable to his share and the position he will occupy in the firm, and particularly a covenant diligently to employ himself in the business thereof: AND FURTHER, that each such son shall bring into and employ in the partnership an amount of capital bearing the same proportion to his share in the partnership as his father's original capital bore to his share therein, and the father's share of capital shall from time to time be reduced accordingly.

As to capital to be brought in by each son.

22. [*Similar clauses as to the introduction of two sons of the said* [*C.D.*].]

Proviso for purchase of deceased or outgoing partner's share (*s*).

23. In case of the death or bankruptcy or retirement under clause 3, or expulsion under clause 4 hereof, of any partner before the expiration of the partnership term, the share of such partner, as from the date of his death or ceasing to be a partner, shall belong to the remaining partners or partner, and if more than one in shares proportionate to their then shares in the profits of the business; AND such remaining partners (if more than one) shall continue in partnership under the terms hereof so far as applicable; AND the deceased partner's estate, or the outgoing partner or his estate (as the case may be), shall be entitled to the amount or value of his share in the capital of the partnership with interest to the date of his death or ceasing to be a partner; AND ALSO if that event happens on a day fixed for taking the general annual account to his share of profits as appearing from such account, or if such event happens on any other day to an allowance in lieu of profits at the rate of —— per cent. per annum on his share in the capital up to the day of such event from the last day for taking the general annual account, or in case such event happens before the —— day of —— from the commencement of the partnership, but subject in any case to the deduction of any drawings by such partner on account of current profits; AND the last general annual account shall be binding upon the representatives of the deceased partner, or the outgoing partner or his representatives (as the case may be), and they or he shall not be entitled to examine the books of the partnership; AND the aggregate amount to which the estate of a deceased partner, or an outgoing partner or his estate, shall be entitled under this clause, together with interest at the rate of —— per cent. per annum

(*s*) As to the representatives of a deceased partner not being "partners" within sect. 1 of the P. Act, 1890, see *Re Fisher & Sons*, [1912] 2 K. B. 491.

from his death or ceasing to be a partner, shall be paid by the remaining partners or partner within —— calendar months from the happening of such event; And as from the date of such event the assets (including the goodwill) of the business shall belong to and the liabilities thereof shall be borne by the remaining partners or partner; And all assurances, indemnities and releases, notices in the Gazette, and other instruments and acts necessary or proper for giving effect to this clause shall be executed, made, and done. The costs of and incidental to carrying this clause into effect shall be borne by the remaining partners or partner, and the representatives of the deceased partner or the outgoing partner (as the case may be) in shares proportionate to their respective shares in the capital.

Costs.

24. Upon dissolution of the partnership in any event not otherwise herein provided for, a general account and valuation of the assets, liabilities, and transactions of the partnership shall be taken and made, and the assets and property shall be sold and realised, and the debts due to the partnership got in; And the moneys arising thereby shall be applied (1) in discharge of the liabilities of the partnership, and the expenses of liquidating the same, and realising the assets thereof; (2) in payment to each partner or his representatives of the amounts due to him in respect of unpaid interest or profits and capital; and (3) the surplus, if any, shall be divided between the partners or their representatives in the shares in which they shall be entitled to the net profits of the business, and the partners or their representatives shall execute and do all such instruments and things as shall be necessary or proper for carrying this clause into effect, and for their mutual indemnity and release.

Dissolution and winding-up of the partnership (*ss*).

25. For the purposes of valuation, the goodwill of the partnership shall be deemed to be equal to three years' purchase of the average net yearly profits of the said business for the last preced-

Valuation of goodwill.

(*ss*) The following short form may be substituted, if desired:—

"Upon dissolution of the partnership in any event not hereinbefore provided for, the affairs thereof shall be wound up and the assets and liabilities dealt with in accordance with the provisions of the Partnership Act, 1890:"

Dissolution. Short form.

see P. Act, 1890, ss. 39, 44; *Hill* v. *Fearis*, [1905] 1 Ch. 466; *Garner* v. *Murray*, [1904] 1 Ch. 57.

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ing —— years, or for the period which shall have elapsed from the commencement of the partnership if less than —— years.

In case of A. B.'s death, surviving partners to have option of purchasing lease of business premises.

26. In case the said [A. B.] shall die before the expiration of the partnership term, then the surviving partners or partner (if only one) shall have the option of purchasing from his representative or representatives the messuage in —— Street, ——, aforesaid, where the business is now carried on, at the price of £——, provided that the surviving partners or partner signify in writing their or his intention of purchasing the said messuage to the representative or representatives of the said [A. B.] within three calendar months after his death; and in such case the surviving partners or partner shall be entitled to an assignment (to be prepared at their or his expense) of the lease of the same premises for the residue which shall then be unexpired of the said term, subject to the rent and to the lessee's covenants reserved by and contained in the said lease.

Retiring partner not to compete with firm.

27. No retiring partner shall, during the unexpired residue of the partnership term, commence, or carry on, or engage or be interested, directly or indirectly, in the trade or business of ——, at —— aforesaid, or within a distance of —— miles therefrom (*t*).

Provision for payment of an annuity to the widow of a deceased partner.

28. If the said [C. D.] shall die at any time during the said term of —— years, leaving a widow, then (without prejudice to the provision contained in clause 23 hereof with regard to the ascertainment and payment out to his executors or administrators of the value of his share) such widow shall be entitled during her life to an annuity of £—— to accrue from day to day, the first payment in respect of such annuity to be made on the first of the usual quarter-days which shall happen after the day of his death, and to be for the period which shall have elapsed since that day, and the annuity to be thereafter payable by equal quarterly payments on the usual quarter-days, and to be secured by the bond or deed of covenant and at the expense of the then remaining partners or partner, to be executed in favour of and to be delivered to such widow, and to be charged on the net profits of the business so long as same shall be carried on by them or him either alone or in partnership with any other person or persons.

Decision of majority to bind partners.

29. In all matters relating to the management and conduct of the partnership business, notwithstanding anything herein con-

(*t*) As to agreements in restraint of trade, see Vol. I., Agreements, Precedent X., p. 35, note (*t*).

tained to the contrary, the decision of a majority [in value (*u*)] of the partners shall be conclusive and bind all the partners.

30. Subject to the provision contained in the last preceding clause, if at any time any dispute, &c. [*continue* ut ante, *Precedent I., cl.* 22, *p.* 246].

Arbitration clause.

31. [*Provision as to notices, see Precedent I., cl.* 21, ante, *p.* 246.]

IN WITNESS, &c.

III. ARTICLES *of* LIMITED PARTNERSHIP *for a* TERM *of* YEARS (*x*), *under the Limited Partnerships Act*, 1907.

THIS INDENTURE (*y*), made the —— day of ——, 19—, BETWEEN [A. B.] (*z*), of, &c., of the first part; [C. D.], of, &c., of the second part; [E. F.], of, &c., of the third part; and [G. H.], of, &c., of the fourth part.

Parties.

WHEREAS the parties hereto have agreed to carry on in partnership together, as a limited partnership, pursuant to the Limited Partnerships Act, 1907, the business of —— for the period and upon the terms hereinafter expressed.

Recital of agreement for partnership.

NOW THIS INDENTURE WITNESSETH, that the parties hereto hereby mutually covenant and agree as follows:—

Testatum.

1. The parties hereto shall become and be partners under the firm of "[B. C. & Co.]" in the business of —— for —— years from the —— day of ——, 19—, if they or any two or more of them shall so long live, subject to determination of such partnership as hereinafter provided.

Business and duration of partnership.

2. The business shall be carried on at ——, or at such other place as the partners shall from time to time determine.

Place of business.

(*u*) If the words in brackets are omitted any two of the partners may overrule the third, as regards any matter relating to the management or conduct of the business. The effect of inserting the words, in the present case, will be that A. B. having a share in the partnership equal to the aggregate shares of C. D. and E. F., cannot be overruled by them in such a matter, and unless an arrangement can be arrived at, the matter will have to go to arbitration.

(*x*) See, as to limited partnerships, Preliminary Note, *ante*, p. 240.

(*y*) Stamp, see Preliminary Note, p. 241.

(*z*) Limited partner. The other partners are "general."

III. ARTICLES OF LIMITED PARTNERSHIP FOR A TERM OF YEARS.

3. The said [A. B.] shall be a limited partner, and the said [C. D.], [E. F.], and [G. H.] shall be general partners within the meaning of the Limited Partnerships Act, 1907.

Description of partners, "limited" and "general."

4. The partnership shall forthwith be registered as a limited partnership as required by the said Act.

Registration of partnership (*a*).

Power to determine partnership (*aa*).

5. On or at any time after the —— day of ——, 19— [the said [A. B.] may determine, or] any of the said general partners may retire from, the said partnership on giving to the other partners or partner not less than —— months previous notice in writing of his intention in that behalf, and at the expiration of such notice [if given by the said [A. B.]], the partnership shall determine [accordingly; but if given by a general partner shall determine] so far as regards the partner giving such notice.

Option to limited partner to become a general partner.

6. At any time after the —— day of ——, 19—, the said [A. B.] may, on giving to the other partners not less than one calendar month's previous notice in writing of his intention so to do, become a general partner instead of a limited partner, and at the expiration of such notice a statement, signed by the firm and showing the nature of the change thereby effected, shall be forthwith delivered or sent by post to the Registrar in compliance with sect. 9 of the Limited Partnerships Act, 1907.

Option to general partner to become a limited partner.

7. At any time after the —— day of ——, 19—, the said [C. D.] may, on giving to the other partners not less than —— calendar months' previous notice in writing of his intention so to do, become a limited partner instead of a general partner; AND upon the receipt of such notice all proper steps shall at once be taken, valuations made and advertisements issued, for the purpose of carrying out the proposed change, and at the expiration of such notice a statement, signed by the firm, showing the nature of such change shall forthwith be delivered or sent by post to the Registrar in compliance with sect. 9 of the Limited Partnerships Act, 1907.

Capital (*b*).

8. The capital of the partnership shall be the sum of £——,

(*a*) See sect. 8, L. P. A. 1907, as to registration.

(*aa*) This clause is suitable where the limited partner's interest is considerably greater than that of the general partners. Where this is not the case the words in brackets should be omitted, and the limited partner, if desirous of retiring, must then become a general partner under clause 6, and give notice of retirement as such.

(*b*) The capital found by the limited partner must be contributed at the time of entering into the partnership: see L. P. Act, 1907, s. 4 (2).

to be contributed by and to be credited in the books of the partnership as belonging to the partners in the following proportions, namely, the sum of £——, being two-fifths thereof, by and to the said [A. B.]; the sum of £——, being one-fifth thereof, by and to the said [C. D.]; the sum of £——, being one other fifth thereof, by and to the said [E. F.]; and the sum of £——, being the remaining fifth thereof, by and to the said [G. H.]: And each such contribution (save as otherwise hereinafter provided) shall be paid in cash into the —— Bank, Limited, to the account of the partnership on or before the —— day of —— next.

Increase of capital.

9. [*Precedent II.*, *clause* 7, ante, *p.* 249.]

Interest on capital.

10. Each partner shall be credited in the books of the business with interest at the rate of —— per cent. per annum on his share of the capital [inclusive of any additional capital brought in by him], such interest to be paid in each year before division of profits.

Payment to partner for rent.

11. [*Precedent II.*, *clause* 10, ante, *p.* 250.]

Division of net profits.

12. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said [A. B.] to two-fifths, and the said [B. C.], [C. D.], [E. F.], and [G. H.] to one-fifth each; And the net profits shall be divided as soon as possible after the general annual account shall have been taken in each year.

Expenses of partnership.

13. [*Precedent II.*, *clause* 11, ante, *p.* 250, *adding the following words*, "but so that the liability of the said [A. B.] [*or*, of the said [C. D.], if and when he shall become a limited partner], in respect of any such deficiency, shall not extend beyond the amount of capital (if any) for the time being standing to his credit in the books of the firm."]

Drawings.

14. The general partners shall be at liberty, by monthly drawings or otherwise, to draw out of the said business, in anticipation of their respective shares of profits, any sum or sums not exceeding the sums following, that is to say, the said [C. D.] the sum of £——, the said [E. F.] the sum of £——, and the said [G. H.] the sum of £——, during any quarter of a year; such sums to be accounted for on taking the next general account, and if on taking such account the amount drawn out by any partner shall be found to exceed his share of the net profits, such partner shall immediately refund the excess.

Limited partner not

15. The said [A. B.], while remaining a limited partner [*or*,

III. ARTICLES OF LIMITED PARTNERSHIP FOR A TERM OF YEARS.

the said [C. B.], if becoming a limited partner, so long as he remains a limited partner], shall not interfere with the management of the said business or sign the name of the firm; but he may exercise all the rights and powers conferred on limited partners by the Limited Partnerships Act, 1907.

to interfere in the business (*c*).

16. The death or bankruptcy of any partner shall not dissolve the partnership as regards the remaining partners.

Death or bankruptcy not to dissolve partnership as to other partners (*d*).

17—21. [*Insert clauses* 15—18 *of Precedent II., p.* 252, *varying these clauses by prefixing the word* "general" *to the words* "partners" *or* "partner" *in every case.*]

Fidelity and other clauses.

22. The general partners shall keep, &c. [*as in clause* 19 *of Precedent II.*, ante, *p.* 253].

Accounts to be kept.

23. The bankers of the partnership shall be the —— Bank, or such other bankers as the general partners shall from time to time agree upon; AND all partnership moneys not required for current expenses shall be paid into the account of the firm at the said bank. All cheques, bills, and other writings pledging the credit of the firm shall be signed by all the general partners [*or*, "by the said [——] and [——]"], and not otherwise.

Bankers and drawing cheques.

General annual account.

24. [*Precedent II., clause* 20, *p.* 254.]

Dissolution and winding-up (*e*).

25. [*Precedent II., clause* 24, *p.* 257.]

Valuation of goodwill.

26. [*Precedent II., clause* 25, *p.* 257.]

Purchase by continuing partners of share of deceased partner.

27. If, during the partnership, any general partner shall die, become bankrupt, or retire, the share of such partner shall, as from his so dying or ceasing to be a partner, belong to the remaining general partners or partner, and, if more than one, in shares proportionate to their then shares in the profits of the business, and the partnership shall be continued between the remaining partners, if more than one, under the terms hereof, so far as applicable; AND the deceased partner's estate, or the outgoing partner or his estate (as the case may be), shall be entitled to the amount or value of his share in the capital of the partnership, with interest to the date of his death or ceasing to be a partner; AND ALSO if that event happens on a day fixed for taking the general annual account, to his share of the profits as appearing

(*c*) See L. P. Act, 1907, s. 6 (1).

(*d*) This clause excludes sect. 33 (1) of the P. Act, 1890. See, as to a limited partner, L. P. Act, 1907, s. 6 (2).

(*e*) See L. P. Act, 1907, s. 6 (3).

from such account, or, if such event happens on any other day, to an allowance in lieu of profits at the rate of —— per cent. per annum on his share of capital up to that day, from the date of the last general account, or, in case such event happens before the —— day of ——, from the commencement of the partnership, but subject in any case to the deduction of any drawings by such partner on account of current profits; And the last general annual account shall be binding on the representatives of the deceased partner, or the outgoing partner or his representatives (as the case may be) [and they or he shall not be entitled to examine the books of the partnership]; And the aggregate amount to which the estate of a deceased partner, or an outgoing partner or his estate, shall be entitled under this clause, together with interest at the rate of —— per cent. per annum from his death or ceasing to be a partner, shall be paid by the remaining general partners or partner within —— calendar months from the happening of such event; And as from the date of such event the assets (including the goodwill) of the business shall belong to and the liabilities thereof shall be borne by the remaining partners or partner, but not so as to increase the liability of the limited partner; And all assurances, indemnities and releases, notices in the Gazette, and other instruments and acts necessary or proper for giving effect to this clause shall be executed, made, and done. The costs of and incidental to carrying this clause into effect shall be borne by the remaining general partners or partner, and the representatives of the deceased partner or the outgoing partner (as the case may be), in shares proportionate to their respective shares in the capital.

Arbitration clause.

28. [*As in Precedent I., clause* 22, ante, *p.* 246.]

Costs (*f*).

29. The costs of and incidental to these presents (including the costs of stamping the statement to be delivered to the Registrar under sect. 8 of the Limited Partnerships Act, 1907) shall be borne by the partners in equal shares (*g*).

In witness, &c.

(*f*) No part of these costs can, it seems, be paid out of the capital contributed by the limited partner.

(*g*) Any other clauses which are appropriate and do not contravene the L. P. Act, 1907, may be added.

IV. ARTICLES OF PARTNERSHIP BETWEEN TWO SOLICITORS.

IV. DEED *of* PARTNERSHIP *between* SOLICITORS, *with* SPECIAL CLAUSES *as to the* CUSTODY *of* DRAFTS, PAPERS, *&c.* (*h*).

THIS INDENTURE (*i*), made the —— day of ——, 19—,

Parties.

BETWEEN [A. B.], of, &c., solicitor, of the one part, and [C. D.], of, &c., solicitor, of the other part.

Recitals: of agreement to become partners;

WHEREAS the said [A. B.] and [C. D.] have agreed to enter into partnership as solicitors, in the city of London, for the term of ——, and under the stipulations and provisions hereinafter contained.

AND WHEREAS the said [A. B.] has been in practice as a solicitor for many years, and holds several appointments, and the said [C. D.] has been in practice as a solicitor for the last —— years.

of the average amount of their respective businesses.

AND WHEREAS it is intended, as hereinafter stipulated, that the said [A. B.] shall be entitled to three fourth parts of the net profits to arise from the partnership business intended to be hereby established; and that the said [C. D.] shall be entitled to the

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As to partnerships between solicitors.

(*h*) It is common for partnerships between solicitors and other professional men to be formed upon terms such as the following:—An established firm of large practice takes in a junior partner, on his paying, for the purchase of the share to be held by him, a sum calculated on the average profit of the business for an antecedent period (frequently two years and a half or three years' purchase on the average profit of the last seven years); and if the incoming partner has been also in practice, the calculation usually is made on the excess of the profit of the purchased share over that of his own business during the same period.

The validity of the sale of the goodwill of a solicitor's business was established by a ruling of Lord Eldon in *Bunn* v. *Guy*, 4 East, 190.

As to the return of premium on determination of the partnership before the date fixed, see the Partnership Act, 1890, s. 40; *Belfield* v. *Bourne*, [1894] 1 Ch. 521. Special provision as to this should be made by the articles.

It is well settled that there is no illegality in an agreement by a solicitor to make an allowance to the representatives, or widow, or children of a deceased partner out of the profits of his business (*Gordon* v. *Dalzell*, 15 Beav. 351); but, of course, an agreement made with an unqualified person admitting him to partnership is illegal, and renders both the solicitor and the unqualified person liable to the statutory penalties: *Hopkinson* v. *Smith*, 7 Moo. 242; *Williams* v. *Jones*, 5 B. & C. 108; *Scott* v. *Miller*, Johns. 220. See, too, 6 & 7 Vict. c. 73, s. 32.

(*i*) For stamp, see Preliminary Note, p. 241.

remaining one-fourth part of such net profits; [AND it has been further agreed that the said [C. D.] shall pay to the said [A. B.], by way of premium, the sum of £——].

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement [and in consideration of the sum of £——, now paid by the said [C. D.] to the said [A. B.], the receipt whereof is hereby acknowledged], the said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

In consideration of a sum of money paid by one partner to the other.

Agreement to become partners.

1. The said [A. B.] and [C. D.] shall become and continue partners in the profession or business of solicitors, for the term of —— years from the date hereof, if they shall so long live. The business shall include the ordinary business of solicitors, and acting as agents for country solicitors, and as auditors and receivers of rents and profits, and the holding of any other offices and appointments of profit usually held by solicitors. The partnership business shall be carried on under the style or firm of "[B.] and [D.]," at No. — in —— Square, or at such other place as the said parties shall from time to time agree upon.

Nature of business.

Place of business, and of firm.

Power to determine partnership.

2. If on or at any time after the —— day of —— either partner shall desire to retire from the partnership, and shall give to the other partner, or leave for him at the place of business for the time being, notice in writing of such his desire, then on the expiration of six months after giving or leaving such notice the retiring partner shall cease to be a partner, subject to clause 23 hereof.

Capital.

3. The capital of the partnership shall consist of the sum of £——, and of such other sum or sums of money as shall from time to time be wanted for carrying on the said business to advantage, which capital shall be contributed by and credited in the books of the firm as belonging to the partners in the same proportions as they shall respectively, for the time being, be entitled to the profits of the said partnership; and, as to the said sum of £——, shall be paid by them in the said proportions to the bankers of the partnership, on account thereof, on or before the —— day of —— next.

Leasehold premises, &c. to be taken over.

4. The leasehold premises upon which the said business is now carried on, and the office furniture, books, boxes, safes, and fittings therein, shall become the property of the partnership, and shall be taken over at the sum of £——, as part of the capital to be contributed by the said [A. B.], and in reduction of the amount to be paid by him to the bankers as aforesaid. The said [A. B.]

IV. ARTICLES OF PARTNERSHIP BETWEEN TWO SOLICITORS.

shall hold the said leasehold premises in trust for the firm, and shall be indemnified by the firm against the rent and the covenants and conditions reserved by and contained in the indenture of lease, dated the —— day of ——, under which he now holds the same premises.

Interest on capital advanced.

5. If either partner shall at any time or times advance or pay, to or for the use or benefit of the said partnership, any sum or sums of money beyond the proportion which he is to contribute, under clause 3, then such partner shall be paid and allowed interest thereon after the rate of —— per cent. per annum, before any division of profits shall be made.

Bankers.

6. Messrs. —— & Co., or such other bankers as the said parties shall jointly approve, shall be the bankers of the partnership.

Cheques, &c. how to be drawn.

7. All cheques, bills of exchange, and promissory notes, made, drawn, indorsed, and accepted by either partner on the joint account of the said partnership, shall be made, drawn, indorsed, and accepted in the name of the firm.

Shares of partners in profits.

8. The partners shall be respectively interested in and entitled to the profits of the partnership business in the proportions following (that is to say): three equal fourth parts shall belong to the said [A. B.], and the remaining one-fourth part thereof shall belong to the said [C. D.]; but the said [C. D.] shall have the option at any time after the —— day of ——, upon giving notice in writing to the said [A. B.] of his intention to exercise such option, of purchasing a further share or shares in the capital, property, and profits of the partnership business, but so that during the continuance of the partnership the share or shares so held by him shall not exceed in the aggregate one-half of the said capital, property, and profits, at a sum equal to three years' purchase of the annual net profits of the partnership attributable to the share so purchased. The purchase-money thereof shall be paid to the said [A. B.] within —— calendar months after such notice as last aforesaid shall have been given, and after such payment the said [C. D.] shall be entitled to all further profits accruing due and attributable to the share or shares so purchased, such profits at the first division of profits thereafter to be apportioned.

Power to junior partner to acquire a further share.

Premium to be retained in case of death.

9. If both or either of them the said [A. B.] and [C. D.] shall die before the expiration of the said first three years of the partner-

ship term, then the said [A. B.], his executors or administrators, shall be entitled to retain the whole of the said consideration or sum of £—— (*k*).

Agents, clerks, &c.

10. No [change shall be made in the London agents of the firm, and no] articled or other clerk, pupil, or servant shall be taken, engaged, or employed, or dismissed, without the consent of both partners.

Premiums, &c. to be considered as profits.

11. All premiums which shall be received with articled clerks, and all fees, emoluments, and benefits that shall arise from the exercise by the said partners respectively of the offices of agent, steward, or receiver, of any other person or persons, or of any public office or appointment whatever, shall be considered and accounted for as profits of the partnership.

Sums to be drawn out monthly by the respective partners.

12. The said [A. B.] shall be at liberty to draw out of the funds of the partnership for his personal expenses the sum of £—— by monthly instalments, during any current year of the partnership; and the said [C. D.] shall be at liberty to draw out the annual sum of £—— in the like manner; such sums to be accounted for on the taking of the general yearly account, as hereinafter mentioned (*l*).

(*k*) As to return of premium, *vide ante*, p. 264, note (*h*). If part of the premium is to be returned in case of death the following clause may be substituted for the above:—

If [C. D.] die within two years, [A. B.] to allow moiety of the premium.

If [A. B.] die within two years, his representatives to make an allowance.

"9A. If the said [C. D.] shall die at any time within the space of two years from the commencement of the partnership, and the said [A. B.] shall survive him, then, and in such case, the said [A. B.] shall and will allow to the executors or administrators of the said [C. D.] the sum of £——, being a moiety of the said sum of £——: But if the said [A. B.] shall die within the space of two years from the commencement of the partnership, and the said [C. D.] shall survive him, then and in such case the executors or administrators of the said [A. B.] shall pay to the said [C. D.] the sum of £——, for his own use."

(*l*) If so intended, add,

Partners to refund excess drawn out.

"But if the sums drawn out by either partner during any current year of the partnership shall exceed the amount of his share of the net profits for such year, then such partner shall refund such excess as soon as the same shall be ascertained at the taking of such general yearly account as aforesaid."

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Expenses and outgoings.

13. The rent, rates, taxes, costs of fire insurance, and other expenses which shall become payable in respect of the offices or chambers in which the partnership business shall be carried on, the expenses of providing stationery, and of paying clerks and servants to be employed in the partnership business, and the premiums for insuring such clerks and servants under the Workmen's Compensation Act, 1906, and the National Health Insurance Act, the expense of fees to counsel, and of travelling, and all other charges and expenses which may be incurred by the partners respectively in the course of the said business, including expenses of and incident to the performance of the duties of any such office or appointment as aforesaid, and all costs and damages which may be incurred on account of the said business, shall, in balancing the accounts of the firm, be charged against revenue. Losses shall be borne and paid by the partners in the shares in which they are entitled to the net profits, except that any loss or damage which shall happen through the wilful neglect or default of either partner, shall be made good by the person through whose default the same shall happen.

Books of account.

14. The partners respectively shall keep proper books of account, and make therein true and perfect entries of all moneys received and paid, and all attendances and business transacted by the partners, or either of them, or their clerks or agents, and of all such other matters or things as ought to be entered in the same books in the usual and regular course of the said business, with all such circumstances of names, times, and places as may be necessary or convenient for better understanding the same. And the said books of account, together with all deeds, securities, letters, and documents belonging or relating to the partnership, shall be kept in the offices of the partnership, or some other place to be appointed for the purpose by mutual consent; and shall at all convenient times be open to the inspection of both the partners.

General annual account.

15. [*Precedent II., clause* 20, *p.* 254.]

Attention to business and other fidelity clauses.

16, 17, 18. [*Precedent II., clauses* 16, 17, *and* 18, *p.* 252, *substituting* "each" *for* "every," "neither" *for* "no," "other of them" *for* "others or other of them," *and* "other partner" *for* "other partners."]

Neither partner to undertake any action, &c. after

19. Neither partner shall undertake the prosecution or defence of any action or other legal proceeding, or transact any professional business, except on behalf of himself or his wife or children, or his, her, or their trustees, or enter into any contract with any

person or persons, after he shall be requested in writing by the other partner not to do the same.

being required by the other not to do so.

20. [*Expulsion clause for breach of particular stipulations,* ut ante, *Precedent I., clause* 18, *p.* 245, *substituting clauses* 7, 10, 11, 16, 17, and 18 *for the clauses there mentioned;* or *general expulsion clause,* ut ante, *Precedent II., clause* 4, *p.* 247, *with such variations as may be required.*]

Expelled partner not to practise for a certain period.

21. In case the partnership shall be dissolved by notice under the clause lastly hereinbefore contained, the partner to whom such notice of dissolution shall have been given, shall not nor will, for the space of seven years thenceforth, either alone or in partnership with any other person or persons, practise or engage in the profession or business of a solicitor at —— aforesaid, or within the distance of ten miles therefrom [*or,* shall not nor will, either alone or in partnership with any other person or persons, for the space of seven years after the dissolution of the said partnership, be concerned professionally, or transact any business, either as principal or clerk, for any person or persons who shall have been a client or clients of the said partnership]: PROVIDED ALWAYS, that if such partner shall in any respect break or infringe this present covenant, then and in such case he the partner so breaking or infringing the same, his executors or administrators, shall immediately thereupon pay to the other of the parties hereto, his executors or administrators, the sum of £—— as and for liquidated damages, and not by way of penalty.

Or not to transact business for the clients of the firm.

On breach of covenant to pay a certain sum as liquidated damages.

Dissolution of partnership.

22. Upon dissolution of the partnership [in any event not herein otherwise provided for] the affairs thereof shall be wound up, and the assets and liabilities dealt with in manner provided by the Partnership Act, 1890 (*m*); PROVIDED that the goodwill of the partnership shall not be sold, but shall be divided between the partners.

Option to continuing partner to purchase share of outgoing partner.

23. In case either partner shall, during the continuance of the partnership, either die, become bankrupt, or determine the partnership by notice under clause 2 hereof, the other partner shall have the option of purchasing the share of the outgoing partner so dying, become bankrupt, or giving such notice as from the date of dissolution, such option to be exercised by giving to the outgoing partner, or his representatives, notice in writing of his

(*m*) See P. Act, 1890, ss. 39, 44; *Garner* v. *Murray,* [1904] 1 Ch. 57.

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intention in that behalf within —— calendar months from the date of dissolution, and the purchase-money shall be the fair value of such share upon an account and statement to be taken and made of his share of the capital and effects of the partnership, and of unpaid profits and interest due to him up to dissolution; and for this purpose a proper valuation of assets (including goodwill) shall be made, but so that the goodwill shall be valued at —— times the average net profits of the business during the —— preceding years, or from the commencement of the partnership if less than that time. [PROVIDED that the profits derived by the outgoing partner from any office of profit or appointment shall not, for the purpose of ascertaining such value, be reckoned as profits of the business.] The purchase-money, when ascertained, shall be paid to the outgoing partner, or his representative, by —— equal instalments, at intervals of —— calendar months, with interest at —— per cent. per annum on the amount for the time being unpaid, the first of such instalments to be paid at the end of —— calendar months from the date of dissolution. Such purchase-money to be secured by bond or by a floating charge on the assets of the business, and all acts and assurances necessary for vesting in the surviving or continuing partner the assets (including the goodwill) of the partnership, shall be done and executed by the outgoing partner or his representatives.

Provision as to the custody of the papers belonging to the firm.

24. In case of the dissolution of the partnership by effluxion of time, the deeds, drafts of deeds, and other documents and papers in the custody of the said parties respectively as such partners as aforesaid, shall be divided between them in manner following (that is to say): The papers relating to the business of persons who were clients of either of the partners before the formation of the partnership, shall (unless the contrary be expressly directed by such clients) be committed to the custody of the partner whose clients such persons formerly were; and with respect to the papers relating to the business of clients not included in this class, the same shall be equally divided between the partners (*n*): AND in case any dispute shall arise as to the custody of the papers in any particular business, it shall be referred to the client, to whose business they relate, to determine to which of the partners the said

Disputes respecting them to be referred to client.

(*n*) *Or*, "shall belong to the partner who shall usually have attended to the business of such clients."

papers shall be delivered. PROVIDED, nevertheless, that nothing herein contained shall prejudice or affect any lien which the said parties may have, either on the partnership account or otherwise, on any deeds or writings in their respective hands or custody.

Custody of books and papers, &c. in case of purchase under clause 23.

25. If either partner shall exercise the option of purchase given by clause 23 hereof in any of the events mentioned in that clause, then, upon the dissolution of the partnership, all deeds, drafts of deeds, and other papers belonging to clients or otherwise, which shall be in the custody of the said partners, or either of them, on account of the partnership, at the time of such dissolution, shall (subject to the claims of the persons, if any, to whom they may happen to belong) remain in the hands of or be delivered to the purchasing partner (*o*).

Notices.

26. All notices authorised or required to be given to either partner hereunder shall be deemed to be duly served if deposited, addressed to such partner, at the office of the firm.

Arbitration clause.

27. Save as is herein otherwise provided, if at any time any dispute, &c. [*continue* ut ante, *Precedent I., clause* 22, *p.* 246].

IN WITNESS, &c.

As to the custody of drafts and other papers.

(*o*) In preparing articles of partnership between solicitors, provision should always be made, in the event of a dissolution, for the destination of the papers in the possession of the firm; this being a point of considerable importance where the dissolving partners intend to practise separately, because, *cæteris paribus,* clients generally resort to the partner who has the custody of their papers. See, as to the right to custody of the deeds and papers, *Ex parte Horsfall,* 7 B. & C. 528; *Doe* d. *Strode* v. *Seaton,* 2 A. & E. 171; *Davidson* v. *Napier,* 1 S. & St. 97; *Whittaker* v. *Howe,* 3 Beav. 383.

Division of business on dissolution.

Solicitors dissolving partnership frequently agree to divide the business pending in the office; but such an arrangement is void against the clients, who, having employed both, have a right, under such retainer, to the benefit of their joint exertions.

Goodwill.

It would seem that in the case of an ordinary solicitor's business nothing of the nature of goodwill can be taken into account as part of the partnership assets: *Arundell* v. *Bell,* 49 L. T. 345; *S. C.,* 31 W. R. 477.

V. ARTICLES OF PARTNERSHIP BETWEEN TWO MEDICAL MEN.

V. ARTICLES *of* PARTNERSHIP *between* TWO MEDICAL MEN.

Parties.

THIS INDENTURE (*p*), made the —— day of ——, BETWEEN [A. B.], of the one part, and [C. D.], of, &c., of the other part.

Recitals: that partner has practised as surgeon.

WHEREAS the said [A. B.] has for some years past carried on the business of surgeon and general medical practitioner at the surgery now occupied by him as tenant from year to year in —— Street, in the parish of —— aforesaid.

Agreement to admit into partnership.

AND WHEREAS the said [A. B.] has agreed to admit the said [C. D.] into partnership with him in the said business upon the terms and conditions and under and subject to the provisions hereinafter expressed.

Testatum.

Mutual covenants.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [C. D.] to the said [A. B.] by way of premium, the receipt whereof the said [A. B.] acknowledges, the said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

To be parties for a term determinable.

1. The said [A. B.] and [C. D.] will become and continue partners in the business of surgeons and general medical practitioners for the term of —— years commencing from the —— day of —— last, if both of them shall so long live, but subject to be determined as hereinafter provided.

Business to be carried on at place agreed upon.

2. The business of the partnership shall be carried on under the style or firm of "[A. B.] and [C. D.]," at the consulting room or surgery now occupied by the said [A. B.] as aforesaid, or at such other consulting room or surgery, as shall be agreed upon by the partners.

Capital.

3. The capital of the partnership shall be the sum of £——, to be contributed as to £—— being three-fourths thereof by the said [A. B.], and as to £—— being the remaining fourth thereof by the said [C. D.]; AND the said sums of £—— and £—— shall be credited in the books of the firm as belonging to the partners contributing the same respectively, and the amount of capital so credited to each partner shall carry interest at the rate of —— per cent. per annum from the date hereof, payable half-yearly, as part of the outgoings of the business before division of profits

(*p*) For stamp, see Preliminary Note, *ante*, p. 241.

V. ARTICLES OF PARTNERSHIP BETWEEN TWO MEDICAL MEN.

4. All the medical and surgical books and instruments and implements of pharmacy belonging to the said [A. B.], and the fixtures in the said surgery, and all the surgical instruments, and all drugs, glass bottles, and other glass now belonging to the said [A. B.], and provided by him for the purposes of his said business, shall become the joint property of the partnership, and shall be taken over at the sum of £—— as part of the capital to be contributed by the said [A. B.]. The balance of the capital to be contributed by the said [A. B.], and the capital to be contributed by the said [C. D.], shall be paid by the said [A. B.] and [C. D.] respectively into the —— Bank to the credit of the firm within —— days from the date of these presents.

Medical books, fixtures, surgical instruments, drugs, bottles, &c., to become joint property.

5. The partners shall be interested in the net gains and profits of the said business in the shares and proportions following, that is to say, the said [A. B.] in three-fourths thereof, and the said [C. D.] in one-fourth thereof.

Shares of partners in profits.

6. The salaries and remunerations of the several appointments of —— and —— now held by the said [A. B.], and of all other appointments which may be held by the partners, or either of them, and all pecuniary presents, gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the partners, or either of them, shall be treated as gains and profits of the business of the partnership, and accounted for accordingly.

Salaries, &c., to be treated as partnership profits.

7. One of the partners shall always reside at the surgery at which the business of the said partnership shall for the time being be carried on, and the said [A. B.] shall at all times have the option of being such resident partner; and the partner who for the time being shall not be resident, shall at all times reside within one mile from the said surgery, and shall be allowed out of the funds of the partnership the monthly sum of £—— for the purpose of providing him with a proper residence.

One partner to reside at surgery.

Allowances to non-resident partner for a residence.

8. The —— Bank at ——, or such other bankers as the partners shall jointly approve, shall be the bankers of the partnership.

Bankers.

9. The rent and also the rates and taxes of the surgery at which the said business shall for the time being be carried on, and all expenses of repairs and insurance, and other outgoings relating thereto, and the said monthly allowance of £—— to the partner who for the time being shall not reside therein, and all expenses of providing drugs and other articles required for the purposes

Rent, &c., allowance, and expenses to be paid out of profits.

Losses to be borne by partners in proportion to share of profits.

V. ARTICLES OF PARTNERSHIP BETWEEN TWO MEDICAL MEN.

of the business of the partnership, and of making good all damages to the said medical and surgical books and instruments, fixtures, and bottles, and all salaries and expenses of assistants, messengers, and servants connected with the said business, and all other expenses and outgoings whatsoever in anywise relating to the business of the partnership, shall, in balancing the accounts of the firm, be charged against revenue, and losses shall be borne by the partners in the shares in which they are entitled to the net profits of the said business.

Accounts to be kept, and proper entries made.

10. Proper books of accounts shall be kept by the partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and all other matters and things as are usually entered in similar books of accounts, including all receipts in respect of the salaries of the several appointments so held by the said [A. B.] as aforesaid, and of any future salaries for appointments which may be held by either of the said partners, and of pecuniary presents and gratuities from patients, and of all other professional emoluments whatsoever. Such books of accounts, with all securities, letters, and writings which may concern the partnership shall be kept at the messuage at which the said business shall for the time being be carried on, and each of the partners shall have free access to inspect and examine the same, and take copies and extracts therefrom.

Account books to be kept on partnership premises, each partner to have access.

To take half-yearly account.

11. On every —— day of —— and —— day of —— during the continuance of the partnership (beginning with the —— day of —— next) a general account in writing shall be made and taken by the partners of all the moneys, credits, property, and effects, and of all debts and liabilities of the partnership, and such account shall be entered in two books and signed in each book by each of the partners; and after such signature each of the partners shall take one of the said books, and they shall both be bound by every account so signed, except that if any manifest error be found therein within —— calendar months after such signature thereof as aforesaid, such error shall be rectified.

To divide the profits equally;

and draw out in advance.

12. Upon such signature as aforesaid of every general account the net gains and profits of the partnership business appearing thereby, after providing for such outgoings and expenses as aforesaid, shall be divided equally between the partners; but each of the partners shall be entitled to draw out in advance on the last day of every calendar month the monthly sum of £——, yet so that if upon taking any general account it shall appear that the

V. ARTICLES OF PARTNERSHIP BETWEEN TWO MEDICAL MEN.

amount of such monthly sums drawn out by each or either of the partners during the preceding half-year exceeds the amount of his share in the net profits appearing by such accounts, the amount of such excess shall be forthwith repaid by him to the accounts of the partnership, and that until such repayment he shall not be entitled to draw out or receive any further sum.

Partners to employ themselves diligently.

13. Each of the partners shall employ himself diligently in the business of the partnership, and use his utmost endeavour to promote the interest thereof.

To be just and faithful.

14. The partners shall be just and faithful to each other, and furnish to each other, when required, full accounts in writing of all matters and transactions relating to the partnership.

Not to employ partnership funds except for partnership purposes.

15. Neither of the partners shall, without the previous consent in writing of the other of them, employ any moneys, property, or effects belonging to the partnership, or engage the credit thereof, except upon the account and for the benefit of the partnership; or enter into any bond, or draw, indorse, or accept any bill of exchange or promissory note, or become bail, surety, or security for any person or persons whomsoever, or subscribe any policy of insurance, or do or knowingly suffer to be done any act or thing whereby or by reason whereof the property or effects of the partnership, or any part thereof, may be attached or taken in execution, or lend any money of the partnership, or otherwise give credit to any person or persons whom the other of them shall, by notice in writing, have forbidden him to trust.

To pay private debts.

16. Each of the partners shall punctually pay and satisfy all his present and future private debts and engagements, and indemnify the other of them, his heirs, executors, and administrators, and the property and effects of the partnership therefrom, and from all actions, suits, damages, and expenses on account thereof.

Either partner may dissolve partnership on notice.

17. It shall be lawful for either of the partners to dissolve the partnership before the expiration of the said term of —— years, by giving to the other of them, or leaving for him at his usual or last known place of residence in England, or at the house at which the said business shall for the time being be carried on, —— calendar months' notice in writing of such dissolution.

Proviso that if partnership is dissolved, [C.D.] shall not carry on business

18. If the said [C. D.] shall be the partner giving such notice, he shall not at any time thereafter, either alone or in partnership, carry on or be engaged, directly or indirectly, in the business or practice of a surgeon or general medical practitioner, or otherwise

V. ARTICLES OF PARTNERSHIP BETWEEN TWO MEDICAL MEN.

practise medicine or surgery in —— aforesaid, or within —— miles from the Town Hall thereof, and in case of his so doing he shall thereupon pay to the said [A. B.], his executors, administrators, or assigns, the sum of £——, which sum, or so much thereof as shall not be so paid, shall be recoverable by the said [A. B.], his executors, administrators, or assigns, as and for ascertained and liquidated damages, and not as in the nature of a penalty.

within —— miles of other.

Final account and division to be made on determination;

19. Upon the dissolution of the partnership, either by the expiration of the said term of —— years, or otherwise, a general valuation and account of the assets, and liabilities and transactions of the partnership, shall be made and taken, &c. [*continue provision for dissolution and winding-up of the partnership as in Precedent II., clause* 24, ante, *p.* 257].

but either partner may take the share of the other at a valuation.

20. [*Option to continuing partner to purchase share of outgoing partner as in Precedent IV., clause* 23, ante, *p.* 269.]

Bond against practising within —— miles of other partner to be given by [C.D.] on dissolution, on notice given by him.

24. In the event of the determination of the partnership upon any notice for the dissolution thereof on the part of the said [C. D.], then, unless under the provisions hereinbefore contained, the share of the said [A. B.] in the property and effects of the said partnership shall be taken at a valuation by the said [C. D.], and he shall thereby become entitled to the whole of the said business, he the said [C. D.] shall give to the said [A. B.] his bond in a sufficient penalty for securing the payment of the sum of £—— as and for liquidated damages, in case the said [C. D.] shall at any time thereafter, either alone or in partnership, carry on or be engaged in, directly or indirectly, the business of a surgeon or general medical practitioner, or otherwise practise either surgery or medicine in —— aforesaid, or within —— miles from the Town Hall thereof.

Arbitration clause.

25. [*Arbitration clause,* ut ante, *Precedent I., clause* 22, *p.* 246.]

In witness, &c.

VI. ARTICLES *of* PARTNERSHIP *on the* ADMISSION *of a* SON *of a* PARTNER *into the* FIRM, *pursuant to a* PROVISION *contained in the* ORIGINAL ARTICLES *of* PARTNERSHIP. (*By* SUPPLEMENTAL DEED.) (*pp*)

VI. ARTICLES OF ACCESSION BY SUPPLEMENTAL DEED.

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; [E. F.], of, &c., of the third part; and [G. B.], of, &c., a son of the said [A. B.], of the fourth part; AND supplemental to certain articles of partnership (hereinafter called "the articles"), dated the —— day of ——, 19—, whereby the said [A. B.], [C. D.], and [E. F.], agreed that they would become and continue partners in the trade or business of ——, at —— aforesaid, for the term of —— years from the date of the articles, under the style or firm of [B.] and Company.

Parties.

AND WHEREAS the said [A. B.], [C. D.], and [E. F.], have from the date of the articles up to the present time carried on the said business pursuant to the articles, and they are now respectively entitled to the capital (amounting as appears by the books of the firm to the sum of £——) and the assets and profits of the partnership in the shares and proportions following, that is to say, the said [A. B.] to six equal tenth shares thereof, the said [C. D.] to three equal tenth shares thereof, and the said [E. F.] to the remaining one equal tenth share thereof.

Recitals: of title of partners to shares;

AND WHEREAS the said [A. B.] is desirous of introducing, pursuant to the provision in this behalf contained in the articles, the said [G. B.] as a partner into the said firm for the unexpired residue of the said term, and to assign to him one equal sixth part of the shares and interest of him the said [A. B.] in the partnership, subject to the covenants, stipulations, and provisions herein contained.

of desire of partner to introduce his son into firm.

NOW THIS INDENTURE WITNESSETH as follows:— *Testatum.*

1. In pursuance of the provision in this behalf contained in the said articles, the said [A. B.], with the consent of the said [C. D.] and [E. F.], testified by their executing these presents, hereby

Introduction of son as a partner.

(*pp*) For provisions in partnership deed for admission of sons, see Precedent II., clause 21, *ante*, p. 254.

(*q*) Stamp, 10*s.*, as a partnership deed, and a further *ad valorem* stamp, as on a disposition *inter vivos*, in respect of the assignment: see Preliminary Note, *ante*, p. 241. The stamp must be adjudicated.

Stamp.

VI. ARTICLES OF ACCESSION BY SUPPLEMENTAL DEED.

introduces the said [G. B.] as a partner into the said firm upon the terms and subject to the covenants, stipulations, and provisions hereinafter contained; And the said [A. B.] hereby assigns unto the said [G. B.] one equal sixth part of the share and interest of him the said [A. B.] of and in the capital, stock-in-trade, goodwill, moneys, credits, and effects of the partnership, and in the profits henceforth to arise from the said business, To HOLD the same unto the said [G. B.] absolutely, subject as hereinafter mentioned.

Mutual covenants to carry on partnership as altered by introduction of son.

2. In consideration of the premises, the said [A. B.], [C. D.], [E. F.], and [G. B.] hereby mutually covenant and agree as follows, that is to say:—

(1) They the said [A. B.], [C. D.], [E. F.], and [G. B.] shall, as from the date of these presents, be and continue partners in the said trade or business of —— for the unexpired residue of the said term of —— years, upon the terms and subject to the covenants, stipulations, and provisions contained in the articles, so far as applicable, and with such variations only as are rendered necessary by the introduction of the said [G. B.] as a partner, and the assignment to him of one equal sixth part of the share of the said [A. B.] as aforesaid; AND will observe and perform all such last-mentioned covenants, stipulations, and provisions, with such variations as aforesaid, in the same manner as if the said [G. B.] had originally been a party to the articles, and the covenants, stipulations, and provisions herein contained had been originally contained in the articles.

(2), (3), (4), &c. [*Here insert, in successive paragraphs, any necessary variations as to capital, profits, weekly drawings, or other special provisions with regard to* [*G. B.*], *or his share in the partnership* (*r*).]

IN WITNESS, &c.

Provision as to estate duty.

(*r*) The father may die within three years after the assignment of a part of his share to the son, in which case, if the assignment is voluntary, estate duty would be payable on the father's death. To meet this contingency, a provision may be added enabling the son to charge the share assigned to him with the amount of the duty payable in respect thereof, together with interest at such rate as the son thinks proper; or, if so intended, the father may covenant with the son that in that event, if the son still remains a partner, the father's executors, &c. will pay to the son the amount of any such duty.

VII. DEED POLL *for* EXTENDING *the* TERM *of a* PARTNERSHIP *to be* INDORSED *upon or* APPENDED *to the* ARTICLES *of* PARTNERSHIP; VARIATIONS *where the original* ARTICLES *are* ALTERED.

VII. DEED POLL FOR EXTENDING TERM OF PARTNERSHIP.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*s*), the within named [*or*, above named] [A. B.], [C. D.], and [E. F.] send greeting: WHEREAS the term of seven years by the within written [*or*, above written] indenture fixed for the continuance of the partnership thereby agreed to be entered into will expire on the —— day of —— next: But the said parties have agreed to continue the partnership for the further period of seven years, upon the same terms and conditions as are within [above] expressed concerning the said partnership thereby created (*t*): NOW THESE PRESENTS WITNESS that each of them the said [A. B.], [C. D.], and [E. F.] doth hereby covenant with the others of them, jointly and severally, in manner following (that is to say): That they the said [A. B.], [C. D.], and [E. F.], and the survivors of them, will continue partners together in the said trade or business for the further term of seven years to be computed from the said —— day of —— next, if they or any two of them shall so long live, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisoes, and agreements [except and subject as hereinafter mentioned] as are within [*or*, above] expressed and contained, of and concerning the within mentioned [*or*, above mentioned] partnership, in like manner as if the within written [*or*, above written] indenture, and the partnership thereby created, and the several covenants, declarations, provisoes, and agreements therein contained [subject as hereinafter mentioned] had been made or entered into for the term of fourteen years instead of the term of seven years (*u*).

Commencement.

Recital: of expiration of partnership term and agreement to continue partners.

Testatum. Mutual covenants to continue partnership and perform covenants, &c., as within.

IN WITNESS, &c.

(*s*) Stamp, 10*s*. Stamp.

(*t*) If any of the provisions are to be altered, add—

"except in respect of the particulars hereinafter mentioned." Variation where new terms are added.

(*u*) Add, if so intended, any modifications of the original terms of partnership, *e.g.*—

"PROVIDED ALWAYS, and it is hereby agreed that the power of determining the partnership at any time during the continuance Extinction of power to determine

VIII. TRANSFER OF MOIETY OF SHARE.

VIII. DEED *of* Assignment (Indorsed *on or* Annexed *to* Articles *of* Partnership) *by* One Partner, *with the* Consent *of the* Others, *of a* Moiety *of his* Share *to a* Third Person, *who is* Admitted *into the* Partnership. Mutual Covenant *by the* Old Partners *and* New Partner *to* Perform *the* Articles.

Parties.

THIS INDENTURE (*x*), made the —— day of ——, 19—, Between the within named [*or*, above named] [A. B.], of the first part; the within named [*or*, above named] [C. D.] and [E. F.], of the second part; and [G. H.], of, &c., of the third part:

Recitals: of existing partnership;

Whereas the said [A. B.], [C. D.], and [E. F.], from the date of the within written [*or*, above written] indenture down to the present time, have carried on the profession or business of solicitors in partnership, pursuant to the provisions of the within written [*or*, above written] indenture:

of agreement for transfer.

And whereas the said [A. B.], with the privity and consent of the said [C. D.] and [E. F.], has contracted with the said [G. H.] for the absolute sale to him of one moiety of his, the said [A. B.'s], one-third share of and in the goodwill, capital, property, and effects of the said partnership for the price of £——; And it has been agreed that such moiety shall be assigned to and vested in the said [G. H.] in manner hereinafter expressed; and that the said several parties hereto shall enter into the covenants herein-

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partnership on notice.

thereof, on giving six calendar months' previous notice, within limited and reserved to the said [A. B.], shall no longer exist, but be entirely extinguished."

Sleeping partner.

Or, "that the said [A. B.] shall not henceforth be required to, and shall not interfere in the carrying on, management, or conduct of the business of the partnership, according to the covenant in that behalf contained in the within written [*or*, above written] indenture, and shall not sign the name of the firm to any cheques, bills, or other writings; nor, without the consent of the said [C. D.] and [E. F.], employ any of the money or effects of the partnership, nor in any way pledge the credit thereof" (*or otherwise, as the case may be*).

Stamp.

(*x*) Stamp, *ad valorem*, as a conveyance by way of sale, in respect of the price of the share assigned, and additional stamp of 10*s.*: see *ante*, p. 241.

after contained. NOW THIS INDENTURE WITNESSETH as follows:—

VIII. TRANSFER OF MOIETY OF SHARE.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [G. H.] to the said [A. B.] (the receipt whereof is hereby acknowledged), the said [A. B.] (with the privity and consent of the said [C. D.] and [E. F.] hereby testified), as beneficial owner, assigns unto the said [G. H.] ALL THAT one undivided moiety or equal half part of the one-third part or share of him, the said [A. B.], of and in the goodwill of the said partnership business, and the profits henceforth to arise therefrom, and of and in the capital, property, and effects of the said partnership; TO HOLD the same unto the said [G. H.] absolutely.

Testatum.

Assignment of a moiety of share to new partner.

2. In further pursuance of the said agreement, and in consideration of the premises, they, the said [C. D.] and [E. F.], at the request of the said [A. B.], hereby admit the said [G. H.] into the said partnership established by the within written [*or,* above written] indenture, as an acting partner therein, in respect of the one moiety hereby assigned of the one-third share of the said [A. B.] in the said partnership business as aforesaid.

Admittance of new partner.

3. Each of them, the said [A. B.], [C. D.], [E. F.], and [G. H.], hereby covenants with the others and each of them, that they, the said [A. B.], [C. D.], [E. F.], and [G. H.], will henceforth become and continue partners in the profession or business of solicitors, for all the residue now unexpired of the said term of —— years mentioned in the within written [*or,* above written] indenture, under and subject to the provisions and stipulations contained in the said indenture, and will at all times hereafter faithfully perform and observe all and every the covenants, provisoes, and agreements contained in the said indenture, so far as having regard to these presents the same are now subsisting and capable of taking effect; AND that the several rights, shares, and interests of the said respective parties, of and in the partnership property, profits, and effects, held and enjoyed by the said parties respectively, under and by virtue of the within written [*or,* above written] indenture, and of these presents, or either of them, shall be subject and liable to the provisions of the said indenture, as fully and effectually, to all intents and purposes, as if the same had been incorporated with and inserted in these presents, with such modifications and variations therein as might be rendered

Mutual covenants between partners.

VIII. TRANSFER OF MOIETY OF SHARE.

necessary by the admission of the said [G. H.] into the partnership as aforesaid.

In witness, &c.

IX. MEMORANDUM *of* Agreement *on* Admission *into a* Firm *of a* New Partner *who brings in* Additional Capital (*to be* Annexed *to the* Articles) (*y*).

MEMORANDUM OF AGREEMENT (*z*), made the —— day of ——, 19—, Between the above named [A. B.] and [C. D.], of the one part; and [E. F.], of, &c., of the other part: Whereby, in consideration of the sum of £——, now brought in and contributed by the said [E. F.] as additional capital of the above mentioned partnership, it is hereby agreed as follows:—

Parties.

Agreement for partnership.

1. The parties hereto shall, as from the date hereof, be and continue partners for the unexpired residue of the above mentioned term, subject in all respects to the conditions, stipulations, and provisions of the above written articles, so far as applicable, and except as varied by this present agreement.

Capital.

2. The capital of the partnership shall be deemed to be the sum of £——, and to have been contributed by the parties hereto in the shares and proportions following, that is to say, two equal fifth shares by the said [A. B.], two other equal fifth shares by the said [C. D.], and the remaining one equal fifth share by the said [E. F.].

Profits and losses.

3. The profits and losses shall belong to and be borne by the parties hereto in proportion to their respective shares.

Monthly drawings.

4. The said [A. B.] and [C. D.] may draw out of the profits the sums mentioned in the above written articles; and the said [E. F.] may draw out of the profits any sum or sums not exceeding £—— in each month.

5. [*Add any restriction as to the rights and powers of the new partner, or stipulation as to other matters, which may be agreed upon.*]

As witness, &c.

(*y*) This form may be adopted in simple cases where the articles of partnership are not under seal.

Stamp.

(*z*) Stamp, 6*d*.

X. DEED *of* DISSOLUTION *of* PARTNERSHIP *between* TWO, *where* ONE PARTNER *pays to the other a* SUM *of* MONEY *in lieu of his* SHARE *of the* STOCK *in* TRADE, *&c.* ASSIGNMENT *of* SHARE. MUTUAL RELEASE, *and* ORDINARY COVENANTS. COVENANT *by* RETIRING PARTNER NOT *to* EXERCISE *the same* TRADE, *&c.*

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

THIS INDENTURE (*a*), made the —— day of ——, BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., of the other part: WHEREAS the said [A. B.] and [C. D.] have for some time carried on the trade or business of —— in partnership, by virtue of articles of partnership, dated, &c., whereby it was provided [*recite material provisions*] [*or*, "and are interested therein in equal shares, but the said partnership is not regulated by any articles or agreement in writing"].

Parties. Recitals: of partnership by parol;

AND WHEREAS the said [A. B.] and [C. D.] have agreed to dissolve the said partnership as from the day of the date hereof, and a notice of such dissolution has been signed by the said [A. B.] and [C. D.], to be published in the London Gazette (*b*).

of agreement for dissolution;

AND WHEREAS upon the treaty for the said dissolution of partnership, it was agreed that the said [C. D.] (who intends to carry on the said trade or business alone), should take over all the share of him, the said [A. B.], in the assets and goodwill of the said partnership, and that such share should be assigned to the

of agreement for continuance of business by one of the partners;

(*a*) It seems clear that this deed is chargeable with a 10*s.* stamp, and also with an *ad valorem* duty as a conveyance on sale, in respect of the sum paid as the price of the outgoing partner's share (see *Potter* v. *I. R. Commissioners*, 23 L. J. Ex. 345; *Christie* v. *I. R. Commissioners*, L. R. 2 Ex. 46; *Phillips* v. *I. R. Commissioners, ibid.* 399; *Garnett* v. *I. R. Commissioners*, 48 W. R. 303); and, possibly, also on the share of the outgoing partner in the debts of the firm taken over by the continuing partner: see Stamp Act, 1891, s. 57; and *Ulverstone, &c. Rly. Co.* v. *I. R. Commissioners*, 2 H. & C. 855. Where the amount so chargeable would be considerable, the liability may be avoided altogether, or partially, by dispensing with a formal assignment of the partnership property and assets (except as regards land or houses, fixtures, goodwill, and other matters which can only pass by assignment), and taking merely an acknowledgment as in Precedent XII., *post*, p. 292: see K. & E. 10th ed. vol. ii. p. 465, note (*d*). As to adding a further stamp for a nominal sum in respect of the covenant for indemnity, see K. & E. *ibid.* p. 468, note (*a*).

Stamp.

(*b*) See Partnership Act, 1890, s. 36 (2), and Limited Partnerships Act, 1907, s. 10, as to effect of notices in the Gazette. See also sect. 37 of the P. Act, 1890, as to the power to compel notification.

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

said [C. D.] accordingly, on his taking upon himself all the debts and liabilities of the partnership which were outstanding on the —— day of ——, and paying to the said [A. B.] the sum of £ — for his share of such of the partnership assets as consist of cash in hand and at the bank, negotiable instruments, and movable chattels, and £—— for his share of the goodwill and the residue of the assets (*b*), making together the sum of £——.

of final amount and valuation;

of agreement as to mode of payment of purchase-money;

AND WHEREAS it has been agreed that the said sum of £—— shall be paid to the said [A. B.] by three equal instalments of £—— each, the first to be paid on the —— day of —— next ensuing, the second on the —— day of —— then next following, and the third and last on the —— day of ——, 19—, with interest on the amount for the time being unpaid at the rate of —— per cent. per annum, to be secured by the joint and several bond of the said [C. D.], and of [*surety*] as his surety.

of bond to secure payment of purchase-money by instalments (*c*).

AND WHEREAS, in pursuance of the said agreement, the said [C. D.] and [*surety*], as his surety, have by their bond, bearing even date with these presents, become bound unto the said [A. B.] in the penal sum of £——, for the payment by the said [C. D.] or [*surety*], or either of them, or their or his heirs, executors, or administrators, unto the said [A. B.], his executors, administrators, or assigns, of the said sum of £——, by such instalments and with such interest as aforesaid.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, it is hereby agreed and declared as follows:—

Dissolution of partnership.

1. The said [A. B.] and [C. D.] hereby declare that the said partnership shall be determined, and stand dissolved as from the day of the date hereof [and that as from that date the articles of partnership hereinbefore mentioned, and all clauses and provisions therein contained, shall absolutely cease and be void].

Mutual release.

2. Each of them, the said [A. B.] and [C. D.], hereby releases and discharges the other of them, his heirs, executors, administrators, and assigns, from all actions, proceedings, claims, and demands, which either of them the said parties, his heirs, executors, or administrators, now has, or hereafter might have had, against the other of them, his heirs, executors, or administrators, by reason of the said partnership, or of any thing in relation

(*b*) See note (*a*), p. 283.
(*c*) See Precedent XIV., *post*, p. 294.

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

thereto; but so, nevertheless, as not to prejudice or affect the covenants or provisions herein contained, or the rights and remedies of the parties hereto respectively, and their respective heirs, executors, administrators, or assigns hereunder.

Assignment of share.

3. In consideration of the sum of £——, being the apportioned part of the said sum of £——, the payment whereof in manner hereinbefore mentioned, is so secured as aforesaid, the said [A. B.], as beneficial owner, hereby assigns and transfers unto the said [C. D.], ALL the moiety or one half part of him, the said [A. B.], of and in all and singular the goodwill and assets of the said partnership other than cash in hand, and at the bank negotiable instruments and movable chattels: TO HOLD the same unto the said [C. D.] absolutely.

Habendum.

Power of attorney.

4. For the consideration aforesaid, and for the more effectually enabling the said [C. D.], his executors, administrators, and assigns, to receive and recover and obtain the benefit of the said several assets and effects hereby assigned, he the said [A. B.] hereby irrevocably (*d*) appoints the said [C. D.], his executors, administrators, and assigns, his lawful attorney and attorneys, in the joint names of the said [A. B.] and [C. D.], or otherwise, but for the exclusive benefit, and at the cost and risk of the said [C. D.], his executors, administrators, or assigns, to demand, call in, and receive from all persons whom it may concern, all and singular the credits, moneys, and effects of the said partnership, and to give effectual receipts and discharges for the same respectively, to indorse and sign bills of exchange and other negotiable instruments, and to use all such remedies or proceedings for recovering and getting in the said credits and effects respectively as may be deemed expedient; and for all or any of the purposes aforesaid, from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke; and generally to do whatsoever shall be requisite for giving to the said [C. D.], his executors or administrators, the full benefit of the assignment hereby made (*e*).

(*d*) See sect. 8 of the Conveyancing Act, 1882 (46 & 47 Vict. c. 39).

(*e*) Where the retiring partner assigns his share, it may frequently be advisable to insert a power of attorney, notwithstanding that an assignment of a debt, of which notice in writing has been given to the debtor, passes the right to the debt, and all remedies, and power to give a discharge for the same, without the concurrence of the assignor; for it may

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

Covenant by retiring partner that he has not contracted debts, &c.

Nor incumbered (*f*).

For further assurance.

5. The said [A. B.] hereby covenants with the said [C. D.] in manner following (that is to say), that he, the said [A. B.], has not at any time heretofore contracted any debt or obligation which can or may charge or affect the said [C. D.], his executors or administrators, or the assets or effects of the said partnership, or any part thereof; nor received or discharged any of the credits of the said partnership, except as appears by the books of the said partnership [nor done any act whereby the share and premises hereby assigned, or any part thereof, may be charged or incumbered in any manner howsoever; AND that he, the said [A. B.], his executors or administrators, will at all times hereafter, on the request and at the costs of the said [C. D.], his executors, administrators, or assigns, make, do, and execute every such further assurance, act, or thing whatsoever, for the more effectually vesting in the said [C. D.], his executors, administrators, or assigns, the premises hereby assigned, and every part thereof, and enabling him and them to receive the same, as shall be reasonably required]; AND that he the said [A. B.], his executors or administrators, will not at any time hereafter receive, compound, or discharge any of the goods, credits, or effects, one moiety whereof is intended to be hereby assigned, and will not release, disavow, or become nonsuit in any action or proceeding which may be brought by the said [C. D.], his executors or administrators, by virtue of the said power, or do any other act or thing in derogation of the assignment hereby made, or the powers or authorities hereby given.

Not to receive or release debts.

Covenants by continuing partner to pay debts, and for indemnity (*ff*).

6. The said [C. D.] hereby covenants with the said [A. B.] that he the said [C. D.], his heirs, executors, or administrators, will, within —— calendar months from the date hereof [*or*, in due course], pay and discharge all the debts and liabilities of the said partnership; AND will at all times hereafter effectually keep indemnified the said [A. B.], his heirs, executors, and administrators, and his and their estate and effects, against all actions, proceedings, costs, damages, expenses, claims, and demands in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or

prove in some cases difficult to give the required notice: see sect. 25 (6) of the Judicature Act, 1873.

(*f*) If the retiring partner assigns his share as "beneficial owner," the covenants against incumbrances, &c. in brackets will be omitted.

(*ff*) See *ante*, p. 283, note (*a*).

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

instituted by the said [C. D.], his executors or administrators [in the name or names of the said [A. B.], his executors or administrators], by virtue of the power or authority hereinbefore contained, or of any act, matter, or thing in relation thereto.

Covenant by [A. B.] not to exercise the trade, or disclose secrets.

7. And in consideration of the premises, he the said [A. B.], hereby covenants with the said [C. D.], that he the said [A. B.] will not at any time within —— years from the date of these presents, either alone or jointly with or as agent or manager for any person or persons whomsoever, either directly or indirectly, exercise, carry on, or be concerned or interested in the trade or business of ——, or any branch thereof, within the distance of —— miles from —— aforesaid (*g*); And will not nor shall divulge or make known to any person or persons whomsoever any of the secrets, accounts, or transactions of or relating to or concerning the said partnership so heretofore carried on between them, the said [A. B.] and [C. D.], as aforesaid; And if the said [A. B.] shall do any act in breach of this present covenant, then that he the said [A. B.] shall immediately thereupon pay to the said [C. D.], his executors or administrators, the sum of £——, as liquidated damages (*h*).

In witness, &c.

(*g*) As to what constitutes a breach of this covenant, see *Hadsley* v. *Dayer-Smith*, [1914] A. C. 979. The distance will be measured "as the crow flies": *Mouflet* v. *Cole*, 8 Ex. 32. The decisions, which are many, as to what is a reasonable distance vary with the class of trade in question. See, generally, as to agreements in restraint of trade, Agreements, Precedent X., Vol. I. p. 35, note (*t*).

As to contracts not to carry on a business.

(*h*) Where a person purchases a share in or the entirety of a business from a retiring partner or any other person, it is important that the extent of the obligation, if any, intended to be imposed upon the vendor not to exercise the business should be explicitly defined, as the point occasions much dispute, and it is by no means well settled how far such an obligation is incident to the contract itself.

Where it is intended that the vendor of the goodwill of a business shall not be restrained from carrying it on, it is better expressly to negative the implication of any such restriction by such a clause as the following:—

Vendor to be at liberty to exercise the trade on his own account.

"Provided always, and it is hereby declared, that nothing herein contained shall extend or be construed to extend to prevent or restrain the said [*vendor*] from setting up or exercising the trade or business of a —— at any place or places, and in any manner that he shall think proper."

XI. DEED OF DISSOLUTION, AND ASSIGNMENT OF SHARE.

XI. DEED *of* Dissolution *of* Partnership *between* Three, *where* One Partner *retires and receives a* Sum *of* Money (*secured by the* Covenants *of the* Continuing Partners, *or on* Mortgage) *in lieu of his* Share—Assignment *of* Share *of* Partnership Assets *other than* Freeholds *and* Leaseholds, *which are* Conveyed *by* Separate Deeds, *and other than* Movable Property (*i*).

Parties.

THIS INDENTURE (*k*), made the —— day of ——, 19—, Between [A. B.], of, &c., of the one part; and [C. D.], of, &c., and [E. F.], of, &c., of the other part.

Recitals: of partnership under articles;

Whereas the parties hereto have for some time carried on the trade or business of —— in partnership, under articles of partnership dated the —— day of ——, whereby they are interested in the partnership property in equal shares.

of nature of partnership property;

And whereas part of the partnership property consists of the several freehold and leasehold properties specified in the first and second parts respectively of the schedule hereto, and of certain fixed and movable machinery, fixtures, and plant; and the partnership property also includes the moneys, stock-in-trade, materials, goodwill and effects used in or belonging to, and of debts owing to the partnership.

of agreement for dissolution;

And whereas the said parties hereto have agreed to dissolve the said partnership, so far as relates to the said [A. B.], as from the —— day of —— last past, and notice of such dissolution has been signed by them respectively with a view to its being inserted in the London Gazette; and it has been agreed that the said trade or business shall as from and after that day be carried on by the said [C. D.] and [E. F.] in partnership without the said [A. B.]; and that they shall have for their own use and benefit all the equal third part or share and interest of the said [A. B.] of and in the said business and the partnership property aforesaid; and that they the said [C. D.] and [E. F.] shall take upon themselves

(*i*) It will generally be advisable that where part of the property of a partnership consists of lands or buildings, the share of a retiring or deceased partner in such property should be conveyed or assigned by a separate deed, so as to keep the fact that it is partnership property off the title.

(*k*) As to stamp, see *ante*, p. 283, note (*a*).

all the debts and liabilities of the partnership which were outstanding on the said —— day of ——, and shall pay to the said [A. B.] the net value of his share as it stood on that day.

of general account and valuation;

And whereas a general account and valuation have been taken and made of the property, assets, and goodwill, and liabilities of the partnership, whereby it appears that the sum of £—— is the amount to which the said [A. B.] was entitled, as on the —— day of ——, in respect of his share of profits and interest, and that the sum of £ —— is the amount of his share in the capital of the partnership after providing for the liabilities thereof; and he is also entitled to a further sum of £—— in respect of interest on his share of capital computed from the said —— day of —— up to the date of these presents.

of amount agreed to be paid for retiring partner's share;

And whereas it has been agreed that the payment of the sum of £—— (being the aggregate amount of the said sums of £——, £—— and £—— to which the said [A. B.] is entitled as aforesaid) by three several instalments of £—— each, one of such instalments to be paid on the —— day of —— next, the second on the —— day of —— , and the third on the —— day of ——, with interest thereon at the rate of —— per cent. per annum, shall be secured by the joint and several covenants of the said [C. D.] and [E. F.] to be contained in an indenture intended to bear even date with and to be executed immediately after these presents (*l*); and that the said [A. B.] shall assign to the said [C. D.] and [E. F.] all the share and interest of him the said [A. B.] of and in the property, assets, and goodwill of the partnership.

of apportionment of purchase-money of retiring partner's share for stamp duty (*m*);

[And whereas for the purposes of stamp duty it has been agreed that the said sum of £—— shall be apportioned, and that the sum of £——, part thereof, shall be taken to be the value of

(*l*) *Or*, "by a mortgage of the said freehold and leasehold hereditaments and the goodwill and other assets of the business (not being personal chattels within the meaning of the Bills of Sale Acts, 1878 and 1882), which mortgage is intended to bear even date with and to be executed immediately after these presents."

Or, "by the joint and several bond of the said [C. D.] and [E. F.] intended to bear," &c.

(*m*) Where all the partnership assets are conveyed to the continuing partners by the deed of dissolution, this recital will not be required.

XI. DEED OF DISSOLUTION, AND ASSIGNMENT OF SHARE.

the share of the said [A. B.] in the said freehold and leasehold premises, and that the sum of £——, further part thereof, shall be taken to be the value of his share of such of the assets of the partnership as consist of cash in hand or at the bank, negotiable instruments, and movable chattels; and that the sum of £——, being the residue of the said sum of £——, shall be taken to be the value of the share of the said [A. B.] in the residue of the partnership property, assets, and goodwill.]

of conveyance of freeholds and leaseholds;

And whereas in pursuance of the said agreement, by an indenture bearing even date with, but executed before, and made between the same parties as these presents, All that the share and interest of the said [A. B.] of and in all the said freehold and leasehold hereditaments mentioned in the first and second parts of the schedule hereto respectively was, in consideration of the sum of £—— [*the apportioned sum*], conveyed and assigned by the said [A. B.] to the said [C. D.] and [E. F.], their heirs and assigns, in manner therein mentioned.

of agreement for indemnity.

And whereas the said [C. D.] and [E. F.] have also agreed to indemnify the said [A. B.] against the debts and liabilities of the partnership in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH as follows:—

Assignment of the retiring partner's share in the partnership property.

1. In consideration of the sum of £——, being the apportioned part so agreed to be paid for the property and assets hereby assigned of the said sum of £—— (the payment whereof the said [A. B.] hereby acknowledges to be so secured as aforesaid), he the said [A. B.] hereby assigns and transfers unto the said [C. D.] and [E. F.] All that the one equal undivided third part or share, and all other the part, share, and interest of him the said [A. B.] of and in all and singular the assets and goodwill of the said partnership, save and except the said freehold and leasehold hereditaments and such of the said assets as consist of cash in hand or at the bank, negotiable instruments and movable chattels:

Habendum.

To hold the premises hereby assigned unto the said [C. D.] and E. F.] absolutely.

Power of attorney.

2. And for the consideration aforesaid, &c. [*power of attorney, ut ante, p. 285, mutatis mutandis*].

Covenants by retiring partner.

3. And the said [A. B.] hereby covenants with the said [C. D.] and [E. F.] in manner following, that is to say [*covenants by retiring partner that he has not contracted any debts, nor incumbered his share; for further assurance; and not to receive or*

release debts, or to disclose trade secrets, ut ante, *pp.* 286, 287, mutatis mutandis] (*n*).

XI. DEED OF DISSOLUTION, AND ASSIGNMENT OF SHARE.

4. The said [C. D.] and [E. F.] do hereby jointly and severally covenant with the said [A. B.] that they the said [C. D.] and [E. F.], or one of them, or the heirs, executors, or administrators of them or one of them will, &c. [*covenants by continuing partners to pay and discharge the partnership debts and liabilities*, "including the rents and covenants to be paid, observed, and performed respectively in respect of the said leasehold premises," *and to indemnify the retiring partner therefrom*, ut ante, *p.* 286, mutatis mutandis].

Joint and several covenant by continuing partners to pay the debts of the partnership.

5. Each of them the said [C. D.] and [E. F.] hereby releases and discharges the said [A. B.], his heirs, executors, administrators, and assigns; and he the said [A. B.] hereby releases and discharges the said [C. D.] and [E. F.], and each of them, and the heirs, executors, administrators, and assigns of them, and of each of them (but subject and without prejudice to the covenants contained in these presents), from all actions, proceedings, claims, and demands which they the said releasing parties respectively, or either of them, or their or his executors or administrators, now have or has, or hereafter may have, against the others or other of them, their or his executors or administrators, by reason of the above recited partnership, or any other matter or thing relating thereto.

Mutual release.

In witness, &c.

The Schedule above referred to.

First Part.

[*A short description of the freehold premises.*]

Second Part.

[*A short description of leasehold premises, stating rent and length of term, &c.*]

(*n*) These clauses can easily be adapted for three partners.

XII. ACKNOWLEDGMENT BY RETIRING PARTNER.

XII. ACKNOWLEDGMENT *by a* RETIRING PARTNER *or the* REPRESENTATIVES *of a* DEAD PARTNER *of* SATISFACTION *of his or their* CLAIMS *against the* PARTNERSHIP (*o*).

To [B. C.] and [C. D.], of, &c., trading together under the firm name of ——.

I, [A. B.], of, &c. [sole executor of the will of [A. B.], deceased], hereby acknowledge the receipt of the sum of £—— paid by you to me in full discharge of all moneys now due and owing to me [*or*, to the estate of the said [A. B.], deceased] in respect of my [his] share and interest of and in the partnership business of Messrs. —— carried on by me [*or*, him] with you up to the —— day of —— [*or*, the day of his death] [under a deed of partnership dated, &c.].

As WITNESS my hand this —— day of ——.

XIII. CONVEYANCE *and* ASSIGNMENT *by an* OUTGOING PARTNER *to his* CO-PARTNERS *of his* SHARE *in* FREEHOLD *and* LEASEHOLD PREMISES *to accompany a* DEED *of* DISSOLUTION *of* PARTNERSHIP.

THIS INDENTURE (*p*), made the —— day of ——, 19—,

Parties. BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., and [E. F.], of, &c., of the other part.

Recitals: of title of partners to freeholds and leaseholds; WHEREAS the parties hereto [have carried on the business of —— as partners up to the —— day of —— last, and] are entitled in equal shares as tenants in common [*or*, as joint tenants], [as part of the partnership property,] to the freehold premises specified in the first part of the schedule hereto and to the leasehold premises specified in the second part of the same schedule (which said leasehold premises are held for the residue of a term of —— years from the —— day of ——, at the yearly rent of £——, under an indenture of lease dated, &c., and made, &c.).

retirement of partner; [AND WHEREAS the said [A. B.] retired from the said partnership on the —— day of ——.]

(*o*) Stamp, one penny, if under hand: see *ante*, p. 283, note (*a*).

Stamp. (*p*) Stamp, *ad valorem*, as a conveyance on sale, in respect of the amount of the purchase-money apportioned as representing the value of the freehold and leasehold premises. If it is desired to keep the partnership off the title, the words in brackets will be omitted.

[AND WHEREAS it has been agreed that the said [C. D.] and [E. F.] shall continue to carry on the said business as co-partners as from the said —— day of —— last.

XIII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON DISSOLUTION.

AND WHEREAS it has been agreed the said [C. D.] and [E. F.] shall pay to the said [A. B.] the sum of £—— in full satisfaction for all his share and interest of and in the said partnership and the assets thereof.

retiring partner's share of agreement to purchase:

AND WHEREAS for the purposes of stamp duty it has been agreed that the said sum of £—— shall be apportioned, and that the sum of £——, part thereof, shall be taken to be the value of or consideration for the share of the said freehold and leasehold premises hereby assigned, and that such share shall be conveyed and assigned unto the said [C. D.] and [E. F.] in manner hereinafter appearing.] NOW THIS INDENTURE WITNESSETH that, [in pursuance of the said agreement, and] in consideration of the sum of £—— to the said [A. B.] paid by the said [C. D.] and [E. F.] [out of partnership moneys] (the receipt whereof is hereby acknowledged):—

of apportionment of price for purposes of stamp duty.

Testatum.

1. The said [A. B.] as beneficial owner conveys, assigns and releases unto the said [C. D.] and [E. F.], ALL THAT one equal third part or share, and all other the part or share and interest of him the said [A. B.] of and in all and singular the said freehold and leasehold premises specified in the first and second parts of the schedule hereto respectively: TO HOLD the same freehold premises unto and to the use of the said [C. D.] and [E. F.], their heirs and assigns, as tenants in common [*or*, joint tenants]; AND TO HOLD the same leasehold premises unto the said [C. D.] and [E. F.] [as joint tenants] henceforth, during the residue of the said term of —— years, at the rent and subject to the covenants in the said lease respectively reserved and contained, and on the lessee's part to be paid and performed.

Conveyance of freeholds and leaseholds.

Habendum.

Covenants for bills by vendor.

2. The said [C. D.] and [E. F.] do for themselves and their assigns, and each of them for himself and his assigns doth hereby covenant with the said [A. B.] that they the said [C. D.] and [E. F.], their executors, administrators, or assigns, or some or one of them, will duly pay, perform, and observe the rent and covenants henceforth on the lessee's part to be respectively paid, performed, or observed in respect of the said premises, by virtue of the said lease, and keep the said [A. B.], his heirs, executors, and administrators, indemnified against all actions, proceedings,

Covenant by purchaser to pay rent and perform covenants.

XIII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON DISSOLUTION.

costs, damages, expenses, claims, and demands whatsoever, for or on account of any non-payment, non-performance, or non-observance thereof respectively.

In witness, &c.

The Schedule hereinbefore referred to.

Part I.
[*Freeholds.*]

Part II.
[*Leaseholds.*]

XIV. BOND *to secure* Payment *of* Instalments *of* Purchase-money *of a* Share *of an* Outgoing Partner *and* Interest *thereon, and to* Indemnify *him against the* Liabilities *of the* Partnership.

Obligation from continuing partners to retiring partner.

KNOW ALL MEN by these presents (*s*), that we, [A. B.], of, &c., and [C. D.], of, &c., are bound to [E. F.], of, &c., in the sum of £—— to be paid to the said [E. F.], or to his executors, administrators, or assigns, or to his or their attorney or attorneys; for which payment we jointly and severally bind ourselves by these presents: Sealed with our respective seals: Dated this —— day of ——:

Recitals: of partnership;

Whereas the said [A. B.], [C. D.], and [E. F.] have for some time past carried on the trade or business of —— in partnership, under the firm of "B. and Co.," at —— aforesaid.

of deed of dissolution and assignment of share;

And whereas by an indenture bearing even date with these presents and expressed to be made between the said [E. F.], of the one part, and the said [A. B.] and [C. D.], of the other part,

Stamp.

(*s*) Stamp, *ad valorem* in respect of the sum, the payment of which is secured. (See vol. i. p. 169.) This bond would also seem in strictness to be liable to *ad valorem* duty in respect of the share of the debts against which the retiring partner is thereby indemnified. But a 10*s.* stamp is generally regarded in practice as sufficient in respect of an indemnity by bond or covenant, where the amount of the debt is not stated.

it has been agreed that the said partnership shall be deemed to be determined and dissolved, so far as relates to the said [E. F.], as from the —— day of ——, and by the same indenture (among other things) the said [E. F.] has assigned unto the said [A. B. and [C. D.], their executors, administrators, and assigns, all the share and interest of him the said [E. F.] in the partnership business and in the stock in trade, goodwill, property, effects, debts, and moneys belonging or owing to the partnership or to the said [A. B.], [C. D.], and [E. F.], or any of them in relation thereto.

XIV. BOND TO SECURE PURCHASE-MONEY OF SHARE IN PARTNERSHIP AND FOR INDEMNITY.

AND WHEREAS upon the treaty for the said dissolution it was (among other things) agreed that the said [A. B.] and [C. D.] should execute and deliver to the said [E. F.] their bond in the penalty above mentioned, with such condition as is hereinafter mentioned.

of agreement for bond.

NOW THE CONDITION of the above written bond is such that if the said [A. B.] and [C. D.], or one of them, or the heirs, executors, or administrators of them, or any of them, should pay to the said [E. F.], his executors, administrators, or assigns, the sum of £—— by the instalments following: that is to say, the sum of £—— on the —— day of —— next; the sum of £—— on the —— day of —— then next following; and the sum of £—— on the —— day of ——; together with interest after the rate of 5 per cent. per annum on each of the said days of payment for the said total sum of £——, or for so much thereof as at or immediately before the payment of such instalments respectively shall remain unpaid, without any deduction: AND shall also within —— calendar months from the date hereof pay and discharge all debts, liabilities, and engagements of the said partnership, to the payment, performance, or observance of which the said [A. B.], [C. D.], and [E. F.], or any of them, or the heirs, executors, or administrators of them or any of them now are or may hereafter become liable, and keep indemnified the said [E. F.], his heirs, executors, administrators, estates, and effects against all actions, proceedings, losses, damages, costs, expenses, claims, and demands whatsoever in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or instituted by the said [A. B.] and [C. D.], or either of them, or their or his executors or administrators in the name or names of the said [E. F.], his executors or administrators, by virtue of the power in that behalf mentioned

Condition for payment of purchase-money by instalments, with interest;

and for indemnity.

XIV. BOND TO SECURE PURCHASE-MONEY OF SHARE IN PARTNERSHIP AND FOR INDEMNITY.

in the said indenture of even date herewith, or of any act, matter, or thing relating thereto: Then the above written bond shall be void, otherwise the same shall be and remain in full force.

Signed, sealed, &c.

XV. DEED *of* COVENANT *by* SURVIVING PARTNERS *to secure a* SHARE *of* CAPITAL *of a* DECEASED PARTNER *left pursuant to the* ARTICLES *of* PARTNERSHIP *as a* LOAN *during the* PARTNERSHIP TERM, *the* INTEREST *to be* INCREASED *in proportion to* INCREASE *of* PROFITS, *&c.*

Parties.

THIS INDENTURE (*t*), made the —— day of ——, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the one part, and [*executor*], of, &c., and [*executor*], of, &c., of the other part:

Recitals: of articles of partnership;

WHEREAS by articles of partnership made the —— day of ——, between the said [A. B.], of the first part, and [C. D.], of the second part, and [E. F.], deceased, of the third part, it was agreed that the parties thereto should become partners for the term of —— years from the —— day of ——, in the trade or business of —— under the style or firm of [B. & Co.], and it was thereby provided [*recite fully articles, that death of a partner should not dissolve a partnership, that on such death a general account and valuation should be taken, and that the share of the deceased partner should be left in the business as a loan to the partnership*].

of death of partner, will, probate, &c.;

AND WHEREAS the said [E. F.] died on the —— day of ——, having, by his will dated the —— day of ——, appointed the said [*executor*] and [*executor*] to be executors thereof, who duly proved the same will on the —— day of ——, in the Principal Probate Registry.

of general account;

AND WHEREAS, pursuant to the provision in that behalf contained in the said articles of partnership, a general account and valuation of the property, assets, and credits and liabilities of the partnership have been made and taken, whereby it appears that the net value of the share of the said [E. F.], deceased, in the capital and assets of the said business amounts to £——.

Stamp.

(*t*) Stamp, *ad valorem*, as a mortgage, on the value of the share of capital left as a loan.

XV. DEED OF COVENANT TO SECURE CAPITAL OF DECEASED PARTNER.

AND WHEREAS all the share of profits arising from the said business and accrued due to the said [E. F.] up to the time of his death amounting to the sum of £—— has been paid by the said [A. B.] and [C. D.] to the said executors (as they the said executors hereby acknowledge).

of payment of share of profits to executors;

AND WHEREAS the said [A. B.] and [C. D.] intend to continue the said trade or business in partnership for the remainder of the said term under the said style or firm of [B. & Co.].

of agreement for leaving deceased partner's capital in the business.

AND WHEREAS it has been agreed that the said sum of £—— (the ascertained value of the said share of the said [E. F.]) shall be continued in the business as a loan to the said [A. B.] and [C. D.] as such continuing partners as aforesaid, and that the repayment thereof with interest at the rate hereinafter mentioned shall be secured in manner hereinafter appearing.

Covenants by surviving partners;

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— so continued in the said business and lent to the said [A. B.] and [C. D.], such continuing partners as aforesaid (the receipt whereof is hereby acknowledged), it is hereby covenanted, agreed, and declared as follows:—

to pay principal and interest.

1. The said [A. B.] and [C. D.] hereby jointly and severally covenant with the said [*executors*] to pay to them on the —— day of —— [*the day of the expiration of the partnership term*] the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long thereafter as any principal money shall remain due under these presents to pay the said [*executors*] interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of ——.

Proviso for payment of additional interest on excess of profits.

2. Whenever in any year the net profits of the said business shall, according to the annual general account for that year, appear to exceed the sum of £——, then the said [A. B.] and [C. D.], or the survivor of them, or the executors or administrators of such survivor, shall during the year next ensuing pay to the said [*executors*], their executors, administrators, or assigns, one equal third part or share of the excess of the profits of the said business above such sum of £—— by way of additional interest by such equal half-yearly payments as aforesaid.

Proviso that executors may join in taking

3. It shall be lawful for the said [*executors*], if and whenever they shall think proper, to take part in making and taking the

XV. DEED OF COVENANT TO SECURE CAPITAL OF DECEASED PARTNER.

annual general accounts and valuations directed to be made and taken by the articles, and at all such reasonable times as shall be agreed upon to have access to and inspect the books, accounts, and other documents of the partnership relating to the said business, and at their own cost to make such copies thereof and such extracts therefrom respectively as they may think proper.

accounts and inspect books, &c. (*u*);

4. Nothing herein contained shall be deemed or construed so as to entitle the said [*executors*] to interfere otherwise in the management or conduct of the said business or render the said [*executors*] liable as partners.

but shall not interfere in management of business, nor be liable as partners.

5. If the said [A. B.] and [C. D.], or either of them, or any future partner or partners in the said firm, shall at any time manage or conduct the said business otherwise than pursuant to the said articles, or shall fail to observe any of the provisions and stipulations herein contained, or if the certified net profits of the said partnership shall fall in any year below the sum of £—— after making provision for the payment of interest on the said sum of £——, then, and in any such case, the said principal sum of £——, and interest and additional interest (if any) then accrued due thereon, shall become payable on demand.

Proviso for calling in principal on breach of articles.

6. The security intended to be hereby effected shall not be in anywise prejudiced or affected whoever may be the persons for the time being constituting or concerned in the said firm or the business thereof, and under whatever style or firm the said trade or business of ——, now carried on by the said [A. B.] and [C. D.], may be carried on.

Proviso that security shall not be affected by changes in the firm.

IN WITNESS, &c.

(*u*) If it is not intended that the executors shall join in taking the accounts, the following provision may be substituted for that in the text:—

"The said [*executors*] shall not be entitled to take any part in the making and taking of the annual general accounts directed to be made and taken by the articles, but such accounts shall be audited immediately after the taking thereof by Messrs. ——, who shall furnish the said [*executors*] with a proper balance sheet at the expense of the partnership, and such balance sheet shall be signed by the said [A. B.] and [C. D.], and shall be conclusive and binding on them."

Proviso that executors may *not* join in taking accounts, &c.

RELEASES.

PRELIMINARY NOTE.

As to releases, see Elph. Introd. 6th ed. 516, and 11 Encyclop. Prec. 442 *et seq.*

The following provision is made by the schedule to the Stamp Act, 1891, with regard to releases:— Stamps.

	£	s.	d.
RELEASE or RENUNCIATION of any property, or of any right or interest in any property—			
Upon a sale. See "*Conveyance on Sale.*"			
By way of security. See "*Mortgage,*" &c.			
In any other case	0	10	0

PRECEDENTS.

I. MUTUAL RELEASE *of all* CLAIMS *by* TWO PERSONS (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part, WITNESSETH, that each of them the said [A. B.] and [C. D.] hereby releases the other of them, his heirs, executors, administrators, and assigns, and his and their estates and effects, from all sums of money, accounts, actions, proceedings, claims, and demands whatsoever, for or by reason or in respect of any act, cause, matter, or thing whatsoever, up to the day of the date of these presents. [PROVIDED ALWAYS, that nothing herein contained shall extend to release the said [C. D.], his heirs, executors, administrators, or assigns, or his or their estates or effects, from any claim or demand which the said [A. B.], as executor of the will of [E. F.], of, &c., deceased, now has, or

Parties.

Release.

Proviso that release shall not extend to

(*a*) A release without recitals is of little value, and only extends to such acts or things as the parties had in their minds at the time of making the release; hence, it is almost invariably wiser to fully recite every fact bearing on the matter: see 11 Encyclop. Prec. 446. In certain exceptional cases the form given above may, however, be useful.

(*b*) Stamp, 10*s*.

I. RELEASE BY TWO PERSONS.

hereafter may have against the said [C. D.] in respect of any accounts or transactions between the said [C. D.] and the said [E. F.], deceased.]

claims of a releasor as executor (*c*).

In witness, &c.

II. MUTUAL RELEASE *of all* Claims *by* Three Persons, *where a particular* Transaction *is* Recited.

Parties.

THIS INDENTURE (*d*), made the —— day of ——, 19—, Between [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; and [E. F.], of, &c., of the third part:

Recitals: of a particular transaction between the parties:

Whereas the parties hereto have recently been jointly engaged and interested in an undertaking for the construction of, &c. [*describe nature of undertaking*], under an agreement dated, &c., and made between the said [A. B.], of the one part, and [X. Y.], of, &c., of the other part, and several questions have arisen as to the rights and liabilities of the parties hereto as between themselves in respect of the said undertaking:

of agreement to pay expenses and divide profits in certain proportions:

And whereas, for the settlement of such questions, it was agreed that the costs and expenses of the said undertaking should be borne and paid by the parties hereto in the shares and proportions following, that is to say, three equal sixth shares thereof by the said [A. B.], two equal sixth shares thereof by the said [C. D.], and the remaining one equal sixth share thereof by the said [E. F.], and that they should share the profits of the said undertaking (if any) in the same proportions:

of ascertained amount of net profits divisible:

And whereas an account of the receipts and expenditure in respect of the said undertaking is set forth in the schedule hereto, whereby it appears that the net profits divisible in the proportions agreed upon as aforesaid amounted to 600*l*., and accordingly such amount has been distributed among and received by the several parties hereto in the proportions or sums following, that is to say, the sum of 300*l*. by the said [A. B.], the sum of 200*l*. by the said [C. D.], and the sum of 100*l*. by the said [E. F.], as the parties hereto respectively acknowledge:

of other transactions.

And whereas there have been divers other accounts, dealings, and transactions between the

(*c*) This proviso may be inserted, if it is intended that this release shall not extend to claims by one of the parties against the other, in a representative character.

(*d*) Stamp, 10*s*.

II. RELEASE IN RESPECT OF PARTICULAR TRANSACTION.

parties hereto, all of which have been adjusted and settled: NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, each of them the said [A. B.], [C. D.], and [E. F.] doth, and every two of them do hereby release the others, and each of the others of them, and their and his heirs, executors, administrators, estates and effects, from all sums of money, accounts, actions, proceedings, claims and demands whatsoever, which any one or any two of them the said [A. B.], [C. D.], and [E. F.] now has or at any time heretofore has had or may have had against the others or either of the others of them, for or on account or in respect of the said undertaking, and for or by reason or in respect of any other transaction, dealing, act, cause, matter, or thing whatsoever, to the date of these presents.

Release.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

III. RELEASE *from* CREDITOR *to* DEBTOR *on* RECEIVING *a* SUM *of* MONEY *in* SATISFACTION *of* DISPUTED CLAIMS.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*releasor*], of, &c. (hereinafter called "the creditor"), of the one part, and [*releasee*], of, &c. (hereinafter called "the debtor"), of the other part: WHEREAS the creditor has from time to time, during several years past, advanced various sums of money to or on account of the debtor; and certain other dealings and transactions have taken place between them, by means whereof the debtor became indebted to the creditor in a considerable sum of money: AND WHEREAS the creditor made certain claims and demands against the debtor, in respect whereof disputes and differences have arisen between the parties hereto: AND WHEREAS, for the purpose of terminating and adjusting such disputes and differences, it was lately agreed between the creditor and debtor that the debtor should pay to the creditor the sum of 500*l.*, in full satisfaction and discharge of all claims and demands whatsoever; and that the creditor should execute such release as is hereinafter contained: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the

Parties.

Recitals: of dealings between the parties;

disputed claims;

agreement to terminate disputes by payment of a sum of money.

(*e*) Stamp, 10*s*.

III. RELEASE BY CREDITOR TO DEBTOR.

In consideration of a sum of money, creditor releases all claims to debtor.

sum of 500*l.* now paid by the debtor to the creditor (the receipt whereof is hereby acknowledged), he the creditor hereby releases the debtor, his heirs, executors, and administrators, from ALL sums of money, and debts, accounts, actions, proceedings, claims, and demands whatsoever, for or by reason or on account of any matter, cause, or thing arising out of the transactions aforesaid, or otherwise, up to and inclusive of the day of the date of these presents.

IN WITNESS, &c.

IV. RELEASE *by* CREDITORS *to a* DEBTOR *under a* COMPOSITION (*f*).

THIS INDENTURE (*g*), made the —— day of ——, 19—, BETWEEN the several persons whose names and descriptions are contained in the schedule hereto (hereinafter called "the creditors"), of the one part; and [*debtor*], of, &c. (hereinafter called "the debtor"), of the other part.

WHEREAS the debtor is indebted to each of the creditors in the sum written opposite his or her name in the third column of the schedule hereto.

AND WHEREAS the creditors have agreed to accept a composition of —— shillings in the pound in full discharge of their said debts.

(*f*) This deed will not bind dissentient creditors or executing creditors in the event of bankruptcy (*Re Stephenson*, 20 Q. B. D. 540), unless for the benefit of particular creditors only, as distinguished from creditors generally: *Re Samson and Schreiber*, 39 Sol. J. 504. The deed will be void unless registered under the Deeds of Arrangement Act, 1914, and unless a majority in number and value of the creditors assent within twenty-one days after registration or such further time as the Court may allow (Deeds of Arrangement Act, 1914, s. 3); and to be valid against purchasers of land it must be registered under the Land Charges Act, 1888, s. 9, as amended by the Land Charges Act, 1900. Neither the validity of the registration nor the deed itself is affected by execution after registration: see *Re Batten*, 22 Q. B. D. 685. A deed of arrangement for *particular creditors*, if made before April, 1914, did not require registration: *Re Samson and Schreiber*, 39 Sol. J. 504; *Re Saumarez*, [1907] 2 K. B. 170; *Re Allix*, [1914] 2 K. B. 77. If made after that date for the benefit of three or more creditors it must be registered, but would not require the assent of a majority of the general creditors: see sect. 37 of the Act of 1913.

(*g*) Stamp, 2*s.* 6*d.* per cent. on the total amount agreed to be paid under the composition.

IV. RELEASE BY CREDITORS TO A DEBTOR UNDER A COMPOSITION.

NOW THIS INDENTURE WITNESSETH as follows:—

Debtor to pay composition.

1. The debtor shall on or before the —— day of —— next pay to each of the creditors who shall execute these presents before that date a composition of —— shillings in the pound on his or her debt, being the sum set out in the fourth column of the schedule hereto opposite his or her name, which said composition each creditor agrees to accept in full satisfaction and discharge of his or her debt.

Release.

2. In case such composition shall be duly paid, each of them the creditors doth hereby release the debtor, his heirs, executors, and administrators, estate and effects, from his or her debt, and such release shall be binding and effectual on the creditors who execute these presents, although some of the creditors of the debtor may not execute these presents, and although the creditors or some of them who shall not execute the same shall receive payment in full (*gg*).

Avoidance of release in case of bankruptcy, &c.

3. PROVIDED ALWAYS, that in case the debtor shall before the —— day of —— have a receiving order in bankruptcy made against him, or in case he shall not before such date as aforesaid have paid to each of the creditors who shall execute these presents the amount of composition due to him or her as specified in the fourth column of the schedule hereto, then these presents shall be null and void.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name of Creditor.	Address, &c.	Debt.	Amount of Composition.	Witness to Execution by Creditor.

(*gg*) See *Re Brindley*, [1906] 1 K. B. 377, at p. 388.

V. RELEASE BY RESIDUARY LEGATEE ON ATTAINING MAJORITY.

V. RELEASE *of all* DEMANDS *from a* RESIDUARY LEGATEE, *after* ATTAINING *the* AGE *of* TWENTY-ONE YEARS, *to* EXECUTORS *and* TRUSTEES.

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN [*legatee*], of, &c., of the one part, and [*executors*], of, &c., of the other part: WHEREAS [*testator*], late of ——, by his will, dated, &c., bequeathed unto his sister, [A. S.], and her assigns, during the residue of his term in the leasehold property therein mentioned, if she should so long live, an annuity of 30*l.*, and charged the same property therewith; AND he gave the residue of his personal estate (subject to various legacies), unto the said [*executors*], their executors, administrators, and assigns, in trust for the maintenance of the said [*legatee*], his nephew (then of the age of thirteen years), until he should attain his majority; and then, in trust for the said [*legatee*], his executors, administrators, and assigns; AND WHEREAS the said [*testator*] died on the —— day of —— without having revoked or altered his said will and the same was proved on the —— day of ——, in the —— District Probate Registry, by the said [*executors*], the executors therein named, who have paid the said annuity of 30*l.* up to Lady Day last past, inclusive, and have paid all the debts and funeral and testamentary expenses of the said testator: AND WHEREAS the said [*legatee*] having attained the age of twenty-one years, the said [*executors*] have this day assigned unto him the said leasehold property (but subject to the said annuity and to the payment of the rent reserved by and performance of the covenants and conditions contained in the indenture of lease under which the said leasehold property is held), and have delivered to him all deeds and writings relating thereto which were in their custody or power; AND WHEREAS the said [*executors*] have this day stated and settled with the said [*legatee*] a true, full and particular account in writing of and concerning all their payments, receipts, and disbursements, as such trustees and executors as aforesaid, up to this day, so far as he is interested therein; which account has been signed by the said [*legatee*]; AND by the said account there appears to be due to the said [*legatee*]

Parties.

Recitals: of will;

of probate and payment of annuity;

of assignment of leaseholds;

of settlement of accounts;

(*h*) Stamp, 10*s.* on release, and further stamp, 10*s.* on the indemnity which extends to the releasee's liabilities under the lease. In case of a release containing an indemnity which simply relates to the releasee's liabilities as trustee or executor, and as between him and the *cestui que trust*, it would seem that one 10*s.* stamp would be sufficient.

in respect of the said residue the sum of 5,000*l.*; AND WHEREAS the said [*executors*] have duly paid to the said [*legatee*] the said sum of 5,000*l.*, as he doth hereby acknowledge; NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, the said [*legatee*] hereby releases and discharges the said [*executors*], and each of them, from all actions, proceedings, claims, and demands whatsoever for or on account of the real or personal estate of the said [*testator*], deceased, or any part thereof, or the income thereof, or of any part thereof; [AND the said [*legatee*] hereby covenants with the said [*executors*] to indemnify them, and each of them, and their respective heirs, executors, and administrators, from all succession or other duties payable in respect of the said leasehold hereditaments, upon the death of the said [A. S.], and from all responsibility in respect of the payment of the said rent and performance and observance of the said covenants and conditions, or otherwise, in respect of the assignment of the said leasehold property to the said [*legatee*] as aforesaid, or any other matter or thing in anywise relating to the premises].

V. RELEASE BY RESIDUARY LEGATEE ON ATTAINING MAJORITY.

Testatum.

Release.

Covenant of indemnity (*hh*).

IN WITNESS, &c.

VI. GENERAL RELEASE *from a* RESIDUARY LEGATEE *to a* SURVIVING EXECUTOR, *with special* RECITALS *of* TRANSACTIONS *in the* TRUST, *by which* LOSSES *had* ACCRUED, *and the* EXECUTORS *had incurred* RESPONSIBILITY; COVENANT *of* INDEMNITY *against the* COVENANTS *in* LEASES *assigned by the* EXECUTOR *to the* LEGATEE.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*legatee*], of, &c. (hereinafter called "the legatee"), of the one part, and [*surviving executor*], of, &c. (hereinafter called "the surviving executor"), of the other part: [*Recite the will of* [A. B.] (hereinafter called "the testator"), *whereby the whole of his real and personal property was devised and bequeathed to his executors, in trust to sell and convert the same, and invest the moneys arising therefrom on government or real security, for the benefit of the testator's widow for life, and, after her*

Parties.

Recitals: of will, &c.;

(*hh*) If a similar covenant for indemnity is contained in the assignment of the leaseholds, it will not be required here; but see *post*, p. 307, note (*l*).

(*i*) Stamps, 10*s.* on release and 10*s.* on indemnity: see *ante*, p. 304, note (*h*).

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

decease, in trust for the legatee, his nephew, absolutely; also, the death of the testator without revoking or altering his will, and probate]; AND WHEREAS the said [*widow*] died on the —— day of ——, having from time to time during her life received from the said [*executors*] the dividends and interest arising from the funds in which the trust moneys constituting the residuary personal estate of the testator had been invested; and also the rents and income arising from so much of the said trust estate as from time to time remained unsold and unconverted; AND WHEREAS the said [*deceased executor*] (hereinafter called "the deceased executor") died on the —— day of —— last; AND WHEREAS the surviving executor, during the life of his co-executor, the deceased executor, did not personally act or interfere in the management of the affairs of the said trust estate, except for the purpose of executing conveyances and transferring funds, and performing other acts of a similar nature, at the request of the deceased executor, who had been the confidential agent and adviser of the said testator, and was more intimately conversant with his affairs than the surviving executor, on which account the deceased executor, with the consent and acquiescence of the surviving executor, assumed the entire and exclusive management of the said trust estate; AND WHEREAS, upon the decease of the deceased executor, an investigation of the affairs of the said trust estate took place, when it was discovered that he had applied to his own use certain sums of money, the produce of portions of the said trust property which had been sold by the deceased executor and surviving executor as aforesaid, and had otherwise neglected the due execution of the trusts created by the said recited will; particularly, in omitting to sell and convert into money certain parts of the said residuary trust estate; by reason whereof the said [*widow*] had received out of the said trust property an annual income considerably exceeding what she would have been entitled to if the said trust property had been duly converted and the produce thereof invested pursuant to the trusts of the said will (*k*); and the value and amount of the reversionary interest of the legatee, under the said will, had been proportionally diminished

of the death of legatee for life;

of death of releasee's co-executor;

that the deceased co-executor had assumed the principal management;

that various breaches of trust had been discovered to have been committed by the deceased executor;

(*k*) When breaches of trust have been committed, to which the release is meant to extend, it is better to recite them, in order to preclude the allegation of their not having been known to, or in the contemplation of, the releasor: see *ante*, p. 299, note (*a*). As to the statutory relief of trustees, see *post*, p. 623, note (*k*).

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

and deteriorated; AND WHEREAS the estate of the deceased executor, at the time of his decease, was insolvent, and wholly inadequate to the payment of his debts; and, therefore, the legatee called upon and required the surviving executor to make good the said losses and deficiencies which accrued to the said trust estate by reason of the transactions aforesaid; but the legatee being now fully convinced that the surviving executor was ignorant of the breaches of trust committed by the deceased executor, has consented to enter into the following arrangement and compromise with the surviving executor: (that is to say), That the surviving executor should, at his own costs and charges, deliver up and effectually assign and transfer to the legatee, ALL and singular the trust estates, moneys, and property now in the hands of the surviving executor, and that thereupon the legatee should execute to the surviving executor a general release in manner hereinafter contained; AND FURTHER, that, inasmuch as part of the said trust estate consisted of leasehold property, held subject to the payment of rents, and to the observance and performance of certain covenants, the legatee should execute to the surviving executor such covenant of indemnity concerning the same as is hereinafter contained (*l*); AND, lastly, it was agreed that the costs of these presents, and otherwise attending the performance of the said agreement, should be paid by the surviving executor; AND WHEREAS, in pursuance of the said agreement, the surviving executor has, by an indenture of even date herewith, assigned to the legatee ALL and singular the messuages, gardens, and pieces or parcels of ground, situate at ——, lately belonging to and in the occupation of the testator, deceased, and held by him under two indentures of lease, dated the —— day of ——,

that deceased executor had died insolvent;

of assignment of leaseholds by deed of even date;

(*l*) It is clear that the executor of a lessee assigning leaseholds to a legatee, whether specific or residuary, is entitled to an indemnity against the rent and covenants of the lease, to which, notwithstanding the assignment, he continues liable to the extent of the assets that have reached his hands: *Simmons* v. *Bolland*, 3 Mer. 547. In the case of an assignment to a *purchaser* no such protection is needed: see stat. 22 & 23 Vict. c. 35, s. 27; and see K. & E. 10th ed. vol. 2, p. 534, note (*a*).

It seems better to introduce the covenant into this deed than into the deed of assignment, as that is delivered up to the legatee, though, as between a vendor and purchaser, the covenant is generally inserted in the assignment.

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

and the —— day of —— respectively, subject to the rents thereby reserved respectively, and to certain covenants and agreements on the part of the testator, his executors, administrators, and assigns, to be observed and performed; AND WHEREAS, in further pursuance of the said agreement, the surviving executor has this day transferred into the name of the legatee the sum of £—— $2\frac{1}{2}$ per cent. Consolidated Bank Annuities, and also the sum of £—— Bank Stock, constituting other part of the property of the testator, deceased; AND WHEREAS, in further pursuance of the said agreement, the surviving executor has this day paid to the legatee the sum of £——, being the balance remaining in the hands of Messrs. —— & Co., of ——, bankers, to the credit of the said trust estate of the testator, deceased; which sum of £—— constitutes the entire residue of the said trust property in the hands of the surviving executor as aforesaid: NOW THIS INDENTURE WITNESSETH as follows:—

of the transfer of funds;

payment of money balance.

Release.

1. In further pursuance of the said agreement, and in consideration of the premises, he the legatee doth hereby release and for ever discharge the surviving executor, his heirs, executors, and administrators, of and from all actions, proceedings, claims, accounts, and demands for or in respect of the real or personal estate of the testator, or any part thereof respectively, or the moneys arising from the sale, conversion, and getting in of the same, or for or in respect of the rents, profits, or income thereof respectively, or any part thereof, or for or in respect or by reason of any misappropriation of the trust funds by the deceased executor, for his own benefit or otherwise, or for or in respect or by reason of the wrongful application for the benefit of the said [*testator's widow*], of the trust estate of the testator, or any part thereof, or the rents, profits, dividends, interest, or income thereof respectively, or any part thereof, or for or in respect of any sale, conversion, investment, payment, application, valuation, act, or thing made, done, executed, neglected, or omitted by the deceased executor and surviving executor, or either of them, in the administration of the said estate or the execution of the trusts of the said will, or for or by reason or in consequence of any losses, damages, or expenses which may have happened or accrued to, or have been incurred by, the estate of the testator, or to or by the legatee by reason or in consequence of such acts, proceedings, neglects, or defaults, or of any other matter, cause, or thing incidental to, or connected with, the said trust estate, or the

will of the said testator, whether the same have been particularly mentioned or referred to in the recitals of this present indenture or not.

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

2. He the legatee hereby covenants with the surviving executor that he the legatee, his heirs, executors, and administrators, will, from time to time, and at all times hereafter, keep indemnified the surviving executor, his heirs, executors, and administrators, and also the heirs, executors, or administrators for the time being of the testator, deceased, from and against all sums of money, costs, charges, damages, and expenses whatsoever, which he or they shall or may pay, incur, or be put unto by reason or on account of the non-payment of the said respective rents, or any part thereof respectively, or the non-observance or non-performance by the legatee, his executors, administrators, or assigns, of any of the covenants or conditions contained in the said leases of the —— day of —— and the —— day of —— respectively hereinbefore referred to, or either of them, and on the lessee's part to be observed and performed, or of any other matter or thing in anywise relating thereunto.

Covenant for indemnity.

In witness, &c.

VII. RELEASE *and* Indemnity *by some of the* Persons *beneficially* Interested *under a* Will *to the* Trustees Carrying on *the* Testator's Trade *without* Authority.

THIS INDENTURE (*m*), made the —— day of ——, 19—, Between [*adult beneficiaries*], of, &c., of the first part; [*infant beneficiary*], of, &c., of the second part; and [*trustees*], of, &c., of the third part.

Whereas [*testator*], late of, &c., by his will dated, &c., after appointing the said [*trustees*] trustees and executors thereof, and after making sundry specific and general legacies as therein mentioned, gave, devised, and bequeathed all the residue of his real and personal property to his trustees, their heirs, executors, administrators, and assigns, upon trust for sale and conversion, and after payment of his funeral and testamentary expenses and debts, to invest the net residue thereof (thereinafter called "his trust estate") in or upon certain stocks, shares, and securities therein mentioned, with power to vary the same and to pay or

Recitals: of will;

(*m*) Stamps, 10*s*. on release and 10*s*. on indemnity: see p. 304, note (*h*).

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

apply the income arising therefrom to or for the benefit of his children in equal shares until such time as there should be no child of his for the time being living under the age of twenty-one years; and so soon as there should be no child of his living under that age, the testator directed his trustees To HOLD as well the capital as the income of the said trust estate upon trust for such of his children as should be then living, if more than one, in equal shares, as tenants in common: PROVIDED that if any child of his should die before the period of absolute vesting under the trust aforesaid leaving a child or children who should survive such period, then such child or children so surviving should take, and, if more than one, in equal shares, the share which their, his, or her parent would have taken had he or she survived the period of absolute vesting.

of death of testator and probate;

AND WHEREAS the testator died on the —— day of —— without having altered or revoked his said will, which was duly proved by the said [*trustees*] on the —— day of —— in the Principal Probate Registry.

of testator's issue;

AND WHEREAS the testator left four children him surviving, namely, the said [*adult beneficiaries*], all of whom have attained the age of twenty-one years, and the said [*infant beneficiary*], who was born on the —— day of ——.

that part of estate consisted of a business

AND WHEREAS part of the testator's estate consisted of the assets and goodwill of the business of a —— carried on by him at his death [under the style of ——], and the said business has at the request of the said [*adult beneficiaries*] been carried on at a considerable profit since the testator's death by the said [*trustees*].

which ought to have been sold;

AND WHEREAS the said business ought to have been sold and wound up as soon after the testator's death as was reasonably possible.

of application of profits;

AND WHEREAS, after making provision for depreciation and the payment of 4 per cent. per annum on the estimated value of the goodwill and assets of the said business to the income account of the said trust, the said [*trustees*] have invested the surplus profits, amounting to the sum of £——, arising from the said business upon certain stocks and securities authorised by the said will, as mentioned in the second part of the schedule hereto.

of property in trust;

AND WHEREAS the property now subject to the trusts of the said will consists of the real and personal estate, the particulars whereof are set forth in the first and second parts respectively of the schedule hereto.

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

of intention in joining infant beneficiary:

AND WHEREAS the name of the said [*infant beneficiary*] has been inserted as a party to these presents to the intent that he may, if he shall think fit, execute the same on his attaining the age of twenty-one years; but the effect of the execution of these presents by the said [*adult beneficiaries*] or any of them as binding each such respective person shall not in any way be prejudiced by the non-execution of these presents by the said [*infant beneficiary*] or by any other person herein named as a party to these presents (*n*).

of consent of trustees to carry on the business;

AND WHEREAS the said [*trustees*], at the request of the said [*adult beneficiaries*], have consented to carry on the said business until the said [*infant beneficiary*] shall have attained the age of twenty-one years, or until such request shall have been made by any of the parties hereto for the sale and winding-up of the said business as hereinafter mentioned, upon having such release and indemnity given to them as is hereinafter contained.

NOW THIS INDENTURE WITNESSETH as follows:—

trustees to carry on trade:

1. In consideration of the premises, the said [*adult and infant beneficiaries*] do and each of them doth hereby declare that it shall be lawful for, but not incumbent on, the said [*trustees*], and other the trustees or trustee for the time being of the said will, to carry on the said business, and do all usual acts for that purpose until they or he shall receive from the said [*adult and infant beneficiaries*], or any one or more of them, or the executors, administrators, or assigns, of any of them, notice in writing to discontinue the same: AND to do such acts in carrying on the said business or in relation thereto, and to sell, demise, and deal with the said real and personal estate of the said testator, or any part thereof, at such time or times, and upon such terms, on credit or otherwise, as shall from time to time be authorised in writing by the said [*adult and infant beneficiaries*], or any one or more of them.

to do such acts as competent *cestuis que trust* shall authorise.

2. PROVIDED that the authority so to be given, and the following

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(*n*) Where the parties are infants or other persons not *sui juris*, or whose binding execution cannot be obtained forthwith, it is necessary to show plainly, either by recital or proviso, the intention that the non-execution by any person named therein shall not prejudice or affect the validity of the deed by those who effectually execute it: see *Peto* v. *Peto* (1849), 16 Sim. 590. Where a minor executes a release upon attaining his majority, he should be independently advised: *Re Garnett*, 31 Ch. D. 1.

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

release and covenant for indemnity against the consequences of any acts done in pursuance of such authority, shall not have any operation against, or be binding upon, any of the said parties hereto, or his or her property or interest, except so far as he or she individually may have given such authority.

Each *cestui que trust* to be bound by such acts only as he shall authorise.

Release by *cestui que trust.*

3. The said [*adult and infant beneficiaries*] hereby release the said [*trustees*], and each of them, his heirs, executors, and administrators, from all present and future actions, proceedings, and claims against them or any of them, on account of the said business having been so carried on as aforesaid, or of any involuntary loss which has been or may be sustained in the said business, or by reason of anything to be done in pursuance of such authority as aforesaid.

Covenant of indemnity.

4. The said [*adult and infant beneficiaries*] jointly and severally covenant with the said [*trustees*] jointly and severally that the said covenanting parties respectively, and their respective heirs, executors, and administrators will at all times indemnify the said [*trustees*] respectively, and their respective heirs, executors, administrators, and assigns against all losses and liabilities consequential on such trading as aforesaid, and from all actions, proceedings, claims and demands on the part of any person or persons whomsoever, and all costs, damages, and expenses by reason of the said business having been carried on as aforesaid, or by reason of any acts to be done in pursuance of these presents or of such authority as aforesaid; And that the said trustees or trustee for the time being may retain, or allow or pay to their or his co-trustee or co-trustees, or to the representatives of any deceased trustee, out of the respective shares of the said covenanting parties in the said trust property, compensation for all losses that they or he may sustain as aforesaid, and that such compensation shall be a specific charge on such shares in priority to all other charges.

Trustees to be indemnified out of the shares of the covenanting parties.

In witness, &c.

The Schedule hereinbefore referred to.

Part I.

Part II. (*o*).

(*o*) In this part of the schedule the investments representing the investments of the surplus profits of the business should be distinguished from the rest of the personal estate by entitling them "Investments of surplus profits of the business."

VIII. RELEASE *to the* TRUSTEES *of a* WILL *upon* DISTRIBUTION *of the* TRUST PROPERTY *between the* TESTATOR'S TWO CHILDREN, *a* DAUGHTER'S SHARE *being* TRANSFERRED *to the* TRUSTEES *of her* MARRIAGE SETTLEMENT.

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN [A. B.] (*son of the testator*), of, &c., of the first part; [C. D.] (*husband of testator's daughter*), of, &c., and [E. D.], his wife, of the second part; [G. H.], of, &c., and [J. K.], of, &c. (*trustees of daughter's marriage settlement*), of the third part; and [L. M.], of, &c., and [N. O.], of, &c. (*trustees of the will*), of the fourth part: WHEREAS [*testator*], late of, &c., deceased, by his will dated, &c., after bequeathing the specific and pecuniary legacies therein mentioned, devised all his real estate, including chattels real whatsoever and wheresoever, and bequeathed all his personal estate (except chattels real and what should be otherwise disposed of by his said will or any codicil thereto) unto [L. M.] and [Q. R.], of, &c., upon trust for sale and conversion into money of the same respectively; and upon further trust [*recite trusts for investment, for payment of income to testator's widow for her life or until re-marriage, and for the benefit of issue as the widow should appoint, and in default of appointment to testator's children equally, sons at twenty-one years of age, daughters on attaining that age or marriage*], AND the testator appointed the said [L. M.] and [Q. R.] executors of his will; AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, leaving the said [A. B.] and [E. D.] (then [E. B.]) his only children him surviving, and his will was proved by the said [L. M.] and [Q. R.] in the Principal Probate Registry on the——day of——, 19—; AND WHEREAS, after the death of the testator, [L. M.] and [Q. R.] sold and converted his real and personal estate, except a leasehold house and the grounds thereto belonging situate at ——, in the county of ——, and held for the term of twenty-one years from the —— day of ——, and out of the moneys arising from such sale and conversion, and out of the ready money of the testator, paid his funeral and testamentary expenses and debts, and invested the residue, amounting to £——, as to £—— on the security of a mortgage of freehold hereditaments situate at ——, in the county

Parties.

Recitals: of will;

of death of testator, and probate of will;

sale and conversion of estate;

(*p*) Stamp, 10*s*.

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

of ——, and as to £——, the residue thereof, in the purchase of £—— 2½ per cent. Consolidated Stock; And whereas the said [Q. R.] died on the —— day of ——, and by an indenture dated, &c., and made between [*parties*], the said [N. O.] was duly appointed in his place to be a trustee of the said will; And whereas the lease of the said leasehold premises expired on the —— day of ——, without the same premises having been sold, and it is apprehended that the omission to sell the same was a breach of trust on the part of the trustees of the said will (*q*); And whereas [*testator's widow*], by a deed poll under her hand and seal, dated the —— day of ——, 19—, in exercise of the power given to her by the said will, appointed that the trust funds subject to the trusts of the said will should thenceforth, subject to her life interest in the income thereof, be held in trust for the said [A. B.] and [E. D.] (then E. B.) in equal shares absolutely; And whereas, by an indenture, dated, &c., and made, &c. (being a settlement made in consideration of the marriage afterwards solemnized between the said [C. D.] and [E. D.], the moiety of the trust funds so appointed to the said [E. D.] as aforesaid was assigned by the said [E. D.], with the approbation of the said [C. D.], unto the said [G. H.] and [J. K.], upon the trusts therein contained and declared concerning the same; And whereas the said [*widow*] died on the —— day of ——, 19—; And whereas the said [L. M.] and [N. O.], at the request of the parties hereto of the first three parts, called in the said mortgage debt or sum of £—— and thereout paid the sum of £—— for succession duty and other expenses incidental to the trust, leaving a balance of £—— cash in their hands; And whereas all income arising from the trust funds during the life of the said [*widow*] was duly paid to her; And whereas the said [L. M.] and [N. O.] have transferred the sum of £—— 2½ per cent. Consolidated Stock into the names of the said [G. H.] and [J. K.], and have paid to them the sum of £—— cash (being the moieties of the said sums of £—— like stock and £—— cash respectively), to be held by them upon the trusts of the said indenture of settlement, and have transferred the sum of £—— like stock into the name of the said [A. B.], and have paid to him the sum of £—— cash (being the residue or other moiety of the said sums of £—— like stock and £——

death of a trustee and appointment of new trustee;

breach of trust;

appointment of trust funds;

settlement of appointed share;

death of testator's widow;

state of the trust property;

transfers and payments.

(*q*) As to reciting breaches of trust, see *ante*, p. 306, note (*k*).

cash respectively) (which said transfers and payments in manner aforesaid the said parties hereto of the first three parts do hereby respectively acknowledge): NOW THIS INDENTURE WITNESSETH as follows:— VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

1. In consideration of the premises, the several parties hereto of the first three parts respectively do, and every one of them doth hereby release the said [L. M.] and [N. O.], and each of them, and their and each of their heirs, executors, administrators, estates and effects, and also the estate and effects of the said [Q. R.], deceased, from all actions, proceedings, claims, demands, and accounts whatsoever, for or in respect of the real and personal estate of the said [*testator*], deceased, and the trust funds for the time being representing the same, and the income thereof, and the management, investment, or application of the same respectively, or for any thing done or omitted or permitted to be done by the said [L. M.] and [N. O.], or the said [Q. R.], or any of them, in or about the administration or exercise of any of the trusts, powers, or provisions of the said will, or for or in respect of any thing in any wise relating to the premises (*r*). Release.

2. Each of them, the said [A. B.] and [E. D.], as to his or her acts only, hereby covenants with the said [L. M.] and [N. O.], and their respective executors and administrators, that, except so far as relates to the settlement in manner aforesaid of the share of the said [E. D.] in the trust funds and premises, they, the said [A. B.] and [E. D.] respectively, have not executed or done or knowingly suffered or been party or privy to any deed or thing whereby their respective shares and interests in the said trust funds and premises are or may be in any manner incumbered or Covenant against incumbrances.

(*r*) If only a partial distribution has been made, the release will be limited to the funds actually paid over and the dealing with them; and the following clause should be added:— Proviso where the distribution is of part of trust property.

"PROVIDED ALWAYS, that nothing herein contained shall operate to release the said [*executors*], or either of them, from the personal estate of the said testator, or the investments representing the same, or the income thereof respectively, other than the said moneys and investments so paid and transferred as aforesaid, and the income thereof, or from any actions, accounts, claims, and demands, for or in respect of such personal estate and income other than as aforesaid."

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

affected, or whereby they are respectively disentitled to share in the distribution of the said trust funds and premises in manner hereinbefore mentioned.

In witness, &c.

IX. RELEASE *to the* Trustees *of a* Marriage Settlement *upon* Distribution *of the* Settled Funds, *the* Dealings *with the* Funds *being set out in a* Schedule.

THIS INDENTURE (*s*), made the —— day of ——, 19—,

Parties.

Between [A. B.] (*son*), of, &c., of the first part; [C. B.] (*son*), of, &c., of the second part; [D. E.] (*married daughter*), the wife of [F. E.], of, &c., of the third part; [G. B.] (*daughter*), of, &c., spinster, of the fourth part; the said [A. B.] and [H. I.], of, &c. (*executors of surviving husband*), of the fifth part; and [J. K.], of, &c., and [L. M.], of, &c. (*trustees of settlement*), of the sixth part: Whereas, by an indenture dated, &c., and made between [*parties*] (being the settlement made on the marriage shortly afterwards solemnized between the said [*husband*] and [*wife*]), it was declared that the said [*original trustees*], or other the trustees or trustee for the time being thereof, should hold the stocks, funds, shares, and securities therein mentioned, the particulars whereof are specified in the first part of the schedule hereto, upon trust either to allow the same to continue in their then state of investment respectively, or at any time or times with the consent of the said [*husband*] and [*wife*], during their joint lives and of the survivor of them during his or her life, and after the death of the survivor at the discretion of the said trustees or trustee, to sell and convert the same into money; but as to some of the same which were then reversionary or contingent not until they should respectively fall into possession: And to invest the proceeds of such sale and conversion in or upon any of the stocks, funds, shares, or securities therein mentioned, including amongst others the stocks, funds, shares, and securities, for and into which the proceeds of the said original trust premises have been from time to time varied and invested; And upon further trust to pay the income to the said [*husband*] for life, and after his death to the said [*wife*,

Recitals: of settlement;

(*s*) Stamp, 10*s*.

if she should survive him, for life, and after the death of the survivor of the said [*husband*] and [*wife*] as to as well the capital as the income of the said trust funds and premises in trust for the issue of the marriage as the said [*husband*] and [*wife*] or the survivor should as therein mentioned appoint; and in default of such appointment in trust for the children of the said marriage who being sons should attain the age of twenty-one years, or being daughters should attain that age, or marry, if more than one in equal shares [*set out hotchpot clause, maintenance and accumulation clauses (if any), and advancement clause*]; And whereas there has been issue of the said marriage the said parties hereto of the first four parts respectively, who have respectively attained the age of twenty-one years some time past, and also one other child [J. B.], who died in the year ——, an infant and unmarried: And whereas the said [*original trustee*] died on the —— day of ——, 19—, and by an indenture dated, &c., and made between [*parties*], the said [J. K.] was duly appointed to be a trustee of the said indenture of settlement in the place of the said [*original trustee*], deceased: and upon such appointment all the stocks, funds, shares, and securities then representing the trust funds subject to the said indenture of settlement, were duly transferred into and vested in the said [J. K.], jointly with the said [*surviving original trustee*], upon the trusts of the said indenture of settlement; And whereas on or about the —— day of ——, 19—, the said [J. K.] and [*surviving original trustee*], with the consent in writing of the said [*husband*] and [*wife*], advanced to the said [A. B.] the sum of £——: And whereas the said [*wife*] died on the —— day of ——, 19—: And whereas, on the —— day of ——, 19—, the said [D. E.], formerly [D. B.], intermarried with the said [F. E.], but no settlement was entered into either before or after the said marriage; And whereas, by an indenture, dated, &c., and made between [*parties*], the said [L. M.] was duly appointed to be a trustee of the said indenture of settlement in the place of the said [*surviving original trustee*], who was desirous of being discharged from the trusts of the same indenture of settlement; and on such appointment the stocks, funds, shares, and securities, then representing the said trust funds, were transferred to and vested in the said [L. M.], jointly with the said [J. K.], upon the trusts of the said indenture of settlement: And whereas the said [*husband*] died on the —— day of ——, 19—, having by his will,

of marriage
of parents
of *cestuis que trust*;
of state of family;
of appointment of J. K. as trustee;
of advance to son;
of death of wife;
of marriage of a daughter;
of appointment of L. M. as trustee;
of death of husband;

IX. RELEASE TO TRUSTEES OF MARRIAGE SETTLEMENT ON DISTRIBUTION.

dated, &c., and proved, &c., appointed the said [A. B.] and [H. I.] to be the executors thereof; AND WHEREAS no appointment was made by the said [*husband*] and [*wife*], or the survivor of them, under the respective powers given to them by the said indenture of settlement as aforesaid; AND WHEREAS the said [L. M.] and [J. K.] have recently sold the sum of £—— Midland Railway 4 per cent. debenture stock, part of the sum of £—— like stock, as mentioned in the second part of the schedule hereto, and out of the sum of £—— realised by such sale have paid the death duties (*ss*) which became payable on the death of the said [*husband*] in respect of the trust funds, and have retained the sum of £——, the balance of the said sum of £——, to meet the costs and expenses of and incidental to these presents and the trust premises. AND WHEREAS the schedule hereto contains in the first part thereof a full and particular account and statement of the trust funds and property originally comprised in the said indenture of settlement; and, in the second part thereof, the particulars of all sales, variations of investment, and other dealings with the same trust premises, and of all receipts and payments by the trustees or trustee for the time being of the said settlement in respect of the capital of the said trust premises, and since the death of the said [*husband*] of the income thereof; and in the third part thereof the particulars of the moneys, stocks, funds, shares, and securities now representing the trust funds and property remaining subject to the said indenture of settlement (*t*); AND WHEREAS the parties hereto of the first four parts respectively have carefully examined the accounts contained in the said schedule hereto, and are satisfied with and approve of the same: AND WHEREAS

and probate of will appointing executors:

of sale of trust funds for payment of duties and costs.

of statement of particulars of trust property, and accounts, &c., in schedule:

of approval of accounts by *cestuis que trust*:

of payment

(*ss*) See, as to death duties, K. & E. 10th ed. vol. 2, pp. 516 *et seq.*; and see also Finance Act, 1914, ss. 12 to 16.

(*t*) It is sometimes more convenient not to schedule the capital and income accounts, in which case delete all reference to the second part of the schedule and insert following recital:—

"AND WHEREAS the accounts of the trustees for the time being of the said indenture of settlement, showing all the particulars of their receipts and disbursements in relation to the said trust premises and the dealings therewith from the date of the said indenture to the present time, have been submitted to the parties hereto of the first four parts, and have been carefully examined and signed by them in testimony of their approval thereof."

all income payable to the said *husband* during his life, in respect of the said trust premises, has been duly paid or accounted for up to the date of his death (as the said [A. B.] and [H. I.] hereby acknowledge); AND WHEREAS the said several parties hereto of the first four parts have agreed that the trust funds and property specified in the third part of the schedule hereto shall be divided amongst them in manner mentioned in the fourth part of the said schedule, and that for the purpose of such division the said [A. B.] shall be treated as bringing into hotchpot the sum so advanced to him as aforesaid; AND WHEREAS, at the request of the same parties hereto, the said [J. K.] and [L. M.] have paid, transferred, and divided the said trust funds and property accordingly: NOW THIS INDENTURE WITNESSETH as follows:—

of income to husband till his death:

of agreement for distribution and release.

1. In consideration of the premises, the parties hereto of the first five parts respectively, do, and every of them doth, hereby release the said [J. K.] and [L. M.], and also the said [*original trustees*], and every of them, and their and every of their heirs, executors, administrators, estates and effects, from all actions, proceedings, claims, demands, and accounts, whatsoever for or in respect of the trust funds and property comprised in or now or at any time heretofore subject to the trusts of the said indenture of settlement, or the income thereof, or of any part thereof, or for or in respect of any act, matter, or thing mentioned or referred to in the said schedule hereunder written, or for or in respect of anything in anywise relating to the premises.

Release.

2. Each of them the parties hereto of the first four parts, as to his or her own acts, hereby covenants with the said [J. K.] and [L. M.], and their respective executors and administrators, that they, the covenanting parties respectively, have not done or been privy or party to anything whereby the respective shares and interests of the covenanting parties in the trust premises are or may be in any manner incumbered or affected, or whereby they are respectively disentitled to share in the division and distribution of the said trust estate in manner hereinbefore mentioned.

Covenant against incumbrances.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

FIRST PART.

[*This will be a list of the original securities.*]

IX. RELEASE TO TRUSTEES OF MARRIAGE SETTLEMENT ON DISTRIBUTION.

SECOND PART.

[This will be a capital and income account, and show all dealings with the trust funds.]

THIRD PART.

[This will be a list of securities available for distribution.]

FOURTH PART.

SECURITY. Nominal value and market value.	Nominal amount (if any) of each security appropriated to -			
	A. B.	C. B.	D. E.	G. B.

X. RELEASE *of an* ANNUITY *on a* REPURCHASE, *and* ASSIGNMENT *of the* TERM *to* MERGE, *where the* REPURCHASE-MONEY *is* PAID *at the* TIME, *or has been previously* PAID. (*By* SUPPLEMENTAL DEED.)

Parties.

THIS INDENTURE (*u*), made, &c., BETWEEN [*grantee*], of, &c. (*w*), of the first part; [*trustees*], of, &c., of the second part; and [*grantor*], of, &c., of the third part; and supplemental to an indenture dated, &c., and expressed to be made between [*parties*] for securing to the said [*grantee*] an annuity of £—— by a charge thereof upon the messuages, lands and hereditaments particularly

(*u*) Stamp, *ad valorem* as on a sale: see Vol. I., Conveyances, p. 307.

As to release or conveyance of annuities of married women.

(*w*) If a married woman be entitled (otherwise than to her separate use) to an annuity, by way of rentcharge, granted out of a *freehold* interest, either in fee or in tail, for her own life, or for the life of another person, she should be a party to the release with her husband, the deed, of course, being duly acknowledged. But if the rentcharge be a chattel interest, as for years determinable on a life or lives, the husband alone may convey or release it, as he might release his wife's annuity granted for a life or lives, out of a *chattel real*, whether limited to her heirs or to her executors: *vide Butt's Case*, 7 Co. 25 a. So, if a personal annuity for life or lives be limited to a married woman, her executors, &c. *Aliter*, if it were limited to her and her heirs.

described in the said indenture, and by a demise of the same premises to the said [*trustees*] for a term of ninety-nine years as therein is mentioned: WHEREAS (*x*) the said [*grantor*] has contracted with the said [*grantee*] for the repurchase of the said annuity of £——, at or for the price of £——. AND WHEREAS all arrears of the said annuity of £—— have been paid and discharged by the said [*grantor*] up to and including the day of the date of these presents, as the said [*grantee*] hereby admits and acknowledges. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said contract, and in consideration of the sum of £——, to the said [*grantee*] paid by the said [*grantor*], upon the execution of these presents (the receipt whereof the said [*grantee*] hereby acknowledges), he the said [*grantee*] hereby releases unto the said [*grantor*], his heirs, executors, administrators, and assigns, ALL THAT the said annuity of £——, so granted and secured to the said [*grantee*], his executors, administrators, and assigns, for and during the life of the said [*grantor*], in and by the said indenture as aforesaid: AND all arrears and future payments thereof, with all powers of distress and entry, and all other remedies whatsoever for recovering the same: To the intent that the same annuity may be merged and extinguished in the freehold of the said hereditaments and premises: AND the said [*grantee*] hereby covenants with the said [*grantor*] that he the said [*grantee*] has not done, or knowingly permitted or been party or privy to any act, deed, matter, or thing whatsoever whereby the said annuity

X. RELEASE AND RE-CONVEYANCE ON REPURCHASE, &C.

Recital of contract for re-purchase.

Recital that all arrears have been paid.

First testatum.

Grant and release of annuity.

To the intent that the same may merge.

Covenant by grantee of annuity that he has not incumbered.

(*x*) If the annuity has been previously re-purchased without taking a release, &c. at the time, say,

PREVIOUS REPURCHASE.

"WHEREAS the said [*grantor*], by virtue of the power contained in the principal indenture, repurchased the said annuity on the —— day of —— last past, and then paid unto the said [*grantee*] all arrears thereof, and also the sum of £—— in full for the absolute repurchase of the same; as the said [*grantee*] hereby acknowledges; AND thereupon the said indenture was delivered up to the said [*grantor*]; but no actual release or surrender of the said annuity, or of the hereditaments and premises comprised in the said term of ninety-nine years, has been made or executed by the said [*grantee*] and [*trustees*] respectively. NOW THIS INDENTURE WITNESSETH that, for the considerations aforesaid, he the said [*grantee*] hereby grants," &c.

Recital of previous repurchase.

Testatum, where there has been a previous repurchase.

X. RELEASE AND RE-CONVEYANCE ON REPURCHASE, &c.

or any part thereof is or may be impeached, charged, or incumbered, or in any way affected; or whereby he the said [*grantee*] cannot or ought not to grant and release the said annuity unto the said [*grantor*] in manner aforesaid. AND THIS INDENTURE FURTHER WITNESSETH that, for the considerations aforesaid, the said [*trustees*], at the request and by the direction of the said [*grantee*], testified by his execution of these presents, do, and each of them doth hereby as trustees convey, surrender, and release, unto the said [*grantor*], ALL THOSE the messuages, lands, hereditaments and premises comprised in the said term of ninety-nine years, with the appurtenances: To the intent that the said term of ninety-nine years may be merged in the reversion or freehold of the same hereditaments and premises.

Second testatum.

Surrender of term by trustees.

Parcels.

To merge the term.

IN WITNESS, &c.

XI. RELEASE *of* DOWER *and* FREEBENCH (*y*).

TO ALL TO WHOM (*z*) THESE PRESENTS SHALL COME, [*dowress*], of, &c., widow of [*husband*], late of, &c., sends greeting: WHEREAS the said [*husband*] died intestate on the —— day of ——, 19—, leaving the said [*dowress*] and [*son*], his eldest son, him surviving; AND WHEREAS the said [*husband*] was at the time of his death seised of certain freehold lands and hereditaments in the parishes of —— and ——, in the county of ——, in fee simple, and was also seised of or entitled to certain copyhold lands and hereditaments in the same parishes in customary fee simple; AND WHEREAS the said [*dowress*] has, at the request of the said [*son*], agreed to release all her claim to dower or freebench in or out of the same lands and hereditaments in manner hereinafter appearing.

Recitals: of death of husband; of agreement for release.

Testatum. NOW KNOW YE AND THESE PRESENTS WITNESS that the said [*dowress*], in consideration of the love and affection she bears to the said [*son*], hereby releases ALL and singular the freehold, copyhold, or customary lands, hereditaments, or estates whatsoever, of the said [*husband*], deceased, and the rents, issues,

Release.

(*y*) See Vol. I., Conveyances, p. 319, note (*m*). The release in this precedent is voluntary. The consideration, if valuable, should be recited or stated.

(*z*) Stamp, *ad valorem* on value of the dower, &c. released, as a voluntary disposition *inter vivos:* see Finance (1909-10) Act, 1910, s. 74. The stamp must be adjudicated.

and profits thereof, and of every part thereof, with the appurtenances, from all claim and title to dower and freebench, whether at law or by custom, which she the said [*dowress*] has or may have or be entitled to thereout, and from all actions, proceedings, accounts, claims, and demands whatsoever, for or in respect of any such dower or freebench as aforesaid.

In witness, &c.

XII. RELEASE *of* Powers *of* Jointuring *and* Charging Portions *for younger* Children (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, Between [*tenant for life*], of, &c., of the one part, and [*remainderman*], of, &c., of the other part; And supplemental to an indenture of resettlement (hereinafter referred to as the principal indenture) dated, &c., and made between [*parties*]: Whereas [*first tenant for life*] died on the —— day of ——, 18—; And whereas on the —— day of ——, 18—, the said [*tenant for life*] intermarried with [*wife*], formerly [*wife's maiden name*], spinster, and he is now tenant for life in possession of the manors and hereditaments comprised in the principal indenture; And whereas the said [*remainderman*] is the eldest son of the said [*tenant for life*] and [*wife*], and attained the age of twenty-one years on the ——

Parties.

Recitals: of death of first tenant for life; of marriage, &c. of present tenant for life; of state of family;

(*a*) Sect. 52 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), enacts that—

"(1.) A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power.

"(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act."

The donee of a special power can release the same for his own benefit: *Re Somes*, [1896] 1 Ch. 250. As to whether the trustee in bankruptcy of the donee of such a power could release it, see *Re Rose*, [1904] 2 Ch. 348; [1905] 1 Ch. 94. As to how far the exercise of such a power can be restricted by a negative covenant, see *Re Evered*, [1910] 2 Ch. 147 (discussed 54 Sol. J. 558); or by a covenant for quiet enjoyment, see *Nottidge* v. *Dering*, [1910] 1 Ch. 297.

A power coupled with a duty is not capable of being released: *Re Eyre* (1883), W. N. p. 153; 49 L. T. 259; *Saul* v. *Pattinson*, 55 L. J. Ch. 831.

A special power, whether exerciseable by deed or will, can be released independently of the Act: see *Smith* v. *Houblon*, 26 Beav. 482; *Re Radcliffe*, 1 Ch. 227; *Re Somes, ubi sup.*; *Horner* v. *Swann*, Turner & R. 430.

(*b*) Stamp, 10*s*.

XII. RELEASE OF POWERS.

day of ——, 19—, and he is now entitled to an estate tail in the said manors and hereditaments in remainder expectant on the decease of the said [*tenant for life*], and there has been issue of the said marriage three other children and no more, namely [*give names*], all of whom are infants and unmarried.

And whereas the said [*tenant for life*] has never exercised either of the said powers of jointuring and charging portions for younger children reserved to him by the principal indenture, or any of the powers ancillary thereto; And whereas the said [*tenant for life*] has recently under the will of [*testator*], of, &c., deceased, dated, &c., and proved, &c., become possessed of or entitled to personal estate of considerable amount and value, out of which he the said [*tenant for life*] intends to make adequate provision for the said [*wife*], if she should survive him, and also for his children now or hereafter to be born other than the said [*remainderman*], and he has accordingly agreed with the said [*remainderman*] to release the powers of jointuring and charging portions given to or vested in him the said [*tenant for life*] by the principal indenture in manner hereinafter appearing.

of agreement for release.

Release of powers.

NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, he the said [*tenant for life*] hereby absolutely and irrevocably releases the manors and hereditaments comprised in the principal indenture, or which now are or may hereafter become subject to the limitations thereof, from, first, All that the power or authority which by the principal indenture is given to or vested in the said [*tenant for life*] by deed or will, to charge the said manors and hereditaments, or any part thereof, by way of jointure as therein mentioned, and to limit or create the usual powers and remedies, and to limit a term of years to secure the same; And, secondly, All that the power or authority which by the principal indenture is given to or vested in him, to charge all or any of the manors and hereditaments therein comprised, or any part or parts thereof, with the payment, for the portion or portions of his younger child or children, of such sum or sums of money and in such manner as in the same indenture is mentioned, with all such other accompanying authorities as are in that behalf therein contained, And all benefit and advantage of the said several powers and authorities, To the intent that the same powers shall respectively be absolutely extinguished and cease to be exercisable.

In witness, &c.

XIII. RELEASE *from a* JOINTURE RENTCHARGE *of* PART *of the* LANDS *charged therewith* (*c*), *and* SURRENDER *of* TERM *created for* SECURING *the* RENTCHARGE.

XIII. RELEASE OF JOINTURE.

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN [*jointress*], of, &c., widow (hereinafter called "the jointress"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*releasee*], of, &c. (hereinafter called "the releasee"), of the third part: WHEREAS [*recite settlement whereby manors, lands, and hereditaments were limited to A. B. for life, with remainder to the use that his widow should receive a jointure rentcharge of £——, and limitation of term of —— years to trustees for securing the jointure, with remainders in strict settlement in favour of the issue of A. B., with remainder to use of releasee for his life, with remainders over*]; AND WHEREAS the said [A. B.] died on the —— day of ——, 19—, without having had any issue, leaving the jointress him surviving; AND WHEREAS the releasee is now the tenant for life in possession of the manors and hereditaments comprised in the hereinbefore recited indenture of settlement, and being desirous of selling such of the same hereditaments as are hereinafter released, has requested the jointress to release the same from her said jointure rentcharge, which she the jointress, being satisfied that the remainder of the said hereditaments on which her said jointure rentcharge is charged is a sufficient security for the same, has consented to do; AND WHEREAS the trustees have agreed, at the request of the releasee and with the consent of the jointress, to surrender the said hereditaments hereby released unto the releasee, in manner hereinafter appearing.

Parties.

Recitals: of settlement;

of death of tenant for life without issue;

of agreement for release;

of agreement by trustees to surrender the term.

(*c*) The release of a jointure is frequently necessary on the sale of part of settled lands. Where the sale is to one purchaser, it will generally be the more convenient course that the jointress should join in the deed of conveyance to release her jointure in favour of the purchaser. But where the sale is to be in lots, it may be better the release should be by a separate deed and to the vendor, who will retain possession of it, and enter into an acknowledgment of the right of the several purchasers to its production, &c.

In either case, except where the release is indorsed upon or actually annexed to the settlement, a memorandum of the release should be written on the settlement.

(*d*) Stamp, 10*s*.

XIII. RELEASE OF JOINTURE.

NOW THIS INDENTURE WITNESSETH as follows:—

Release of jointure.

1. For the purpose of enabling the releasee to effectuate the said sale, and in consideration of the premises, she the jointress hereby releases ALL and singular the messuages, lands, and hereditaments particularly described in the schedule hereto, from the said jointure rentcharge of £—— so charged thereon as aforesaid, AND from all actions, proceedings, accounts, claims, and demands whatsoever, for or in respect thereof, or any part thereof, and all powers and remedies for recovering the same.

Covenant against incumbrances.

2. The jointress hereby covenants with the releasee that she the jointress has not done, omitted, or knowingly suffered or been party or privy to anything whereby she is in anywise hindered from releasing the said hereditaments hereby released, or any part thereof, from the said jointure rentcharge of £——, and the powers and remedies for recovering the same in manner aforesaid.

Surrender by the trustees of the jointure term.

3. In further pursuance of the said agreement, and in consideration of the premises, the trustees, at the request and by the direction and appointment of the jointress, do hereby as trustees surrender unto the releasee, his heirs and assigns, ALL THOSE the messuages, lands, hereditaments, and premises particularly described in the schedule hereto, with their appurtenances, freed and discharged from the said jointure rentcharge; To the intent that the residue now unexpired of the said term of —— years therein created by the hereinbefore recited indenture of settlement may be merged and extinguished in the freehold and inheritance of the same premises.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XIV. RELEASE *by a* MORTGAGEE *of* PART *of* LANDS *intended to be* LAID OUT *as a* BUILDING ESTATE.

Parties.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part:

Recitals: of mortgage;

WHEREAS, by an indenture of mortgage, dated the —— day of ——, 19—, and made between [*parties*], the hereditaments hereinafter described were, with other heredita-

(*e*) Stamp, 10*s*.

ments, conveyed and assured to the use of the said [*mortgagee*], in fee simple by way of mortgage for securing payment to him of the sum of £——, with interest thereon at the rate of —— per cent. per annum; AND WHEREAS the said sum of £——, together with some interest, is now owing to the said [*mortgagee*] on the security of the said indenture of mortgage; AND WHEREAS the said [*mortgagor*] is desirous of laying out and developing the hereditaments and premises hereinafter described as a building estate, and has requested the said [*mortgagee*] to release the said hereditaments from the said mortgage debt, which the said [*mortgagee*], being satisfied that the said sum of £——, and the interest now and hereafter to become due thereon, are sufficiently secured upon the hereditaments comprised in the said indenture of mortgage, other than the hereditaments hereinafter described and hereby released, has agreed to do in manner hereinafter appearing.

XIV. RELEASE BY MORTGAGEE.

of state of mortgage debt:

of agreement for release.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and in consideration of the premises, he the said [*mortgagee*], as mortgagee, hereby grants and releases unto the said [*mortgagor*], ALL THOSE several messuages and closes of land, &c. [*describe parcels*], TO HOLD the same premises unto and to the use of the said [*mortgagor*], and his heirs, freed and discharged from all principal moneys and interest secured by and from all claims and demands under or by virtue of the said hereinbefore recited indenture of mortgage.

Release.

IN WITNESS, &c.

XV. RELEASE *by* DEED POLL, *by a* LEGATEE, *of* LANDS *charged with* PAYMENT *of* TWO PECUNIARY LEGACIES.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*f*), [*legatee*], of, &c., sends greeting. WHEREAS [*testator*], late of ——, by his will dated the —— day of ——, [amongst other things] bequeathed to the said [*legatee*] the sum of 1,500*l.* and directed that the same, with interest, after the rate of —— per cent. per annum, from the day of his death, should be charged on and payable out of certain lands and hereditaments at ——, in the county of ——, forming part of his real estate; and the said testator by his said will gave and devised the said lands and hereditaments so

Recitals: of will bequeathing legacy charged on land:

(*f*) Stamp, 10*s*.

XV. RELEASE OF LANDS CHARGED WITH LEGACIES.

charged as aforesaid to [*devisee*], of, &c., in fee simple; and the said testator thereby appointed [*executors*], executors thereof: AND WHEREAS the testator, by a first codicil dated the —— day of ——, to his said will [amongst other things] bequeathed unto the said [*legatee*], the sum of 1,000*l.* in addition to what he had given to him by his said will, and to be charged and payable as was directed with respect to the original legacy, and he thereby in all other respects confirmed his said will: AND WHEREAS the testator, by a second codicil dated the —— day of ——, to his said will, appointed [*executor*], of, &c., one of his trustees and executors jointly with those named in his said will; AND WHEREAS the testator died on the —— day of ——, 19—, without having altered or revoked the said two legacies of 1,500*l.* and 1,000*l.*, so bequeathed to the said [*legatee*], by his said will and first codicil respectively as aforesaid: AND WHEREAS the said will, together with the said two codicils thereto, were proved by the executors named in the said will and the said second codicil thereto respectively, on the —— day of ——, in the Principal Probate Registry: AND WHEREAS the said legacies of 1,500*l.* and 1,000*l.* respectively still remain unpaid: AND WHEREAS the said [*devisee*] being desirous of selling certain closes of land and hereditaments particularly described in the schedule hereto, being part of the said lands and hereditaments so devised to him as aforesaid, has requested the said legatee to release the same from the said legacies of 1,500*l.* and 1,000*l.* respectively in manner hereinafter appearing, which the said [*legatee*] has consented to do, being satisfied that the residue of the hereditaments on which the said legacies are charged are a sufficient security for the same and the interest thereon respectively.

and appointing executors; codicil, giving further legacy; second codicil, appointing another executor; death of testator, and probate; legacies still unpaid (*ff*).

Testatum. Release.

NOW THESE PRESENTS WITNESS that the said [*legatee*] doth hereby release ALL the several closes of land and hereditaments situate at ——, in the county of ——, particularly described in the schedule hereto [and all other, if any, the lands and here-

(*ff*) If the legacies have been paid, and it is intended to release all the lands charged with the legacies, omit this and the following recital, and recite that—

"the said legacies of 1,500*l.* and 1,000*l.* have been fully paid and discharged as the said [*legatee*] hereby admits,"

and insert the words in brackets in the *testatum*, which must otherwise be omitted.

ditaments charged with payment of the said legacies or either of them, and the interest thereon respectively, and also the said [*devisee*], his heirs, executors, and administrators, and also the estate of the said [*testator*], deceased], from the said several legacies or sums of 1,500*l.* and 1,000*l.*, and the interest now due or hereafter to become due thereon respectively, and every part thereof respectively, and from all actions, proceedings, claims, and demands for or in respect of the same respectively. XV. RELEASE OF LANDS CHARGED WITH LEGACIES.

In witness, &c.

The Schedule hereinbefore referred to.

XVI. RELEASE *of a* Right *of* Way, *by* Indorsement *on the* Deed *of* Grant *thereof*.

THIS INDENTURE (*g*), made the —— day of ——, 19—, Between the within named [*grantee*], of, &c., of the one part, and the within named [*grantor*], of, &c., of the other part; WITNESSETH that in consideration of £—— now paid by the said [*grantor*] to the said [*grantee*] (the receipt whereof is hereby acknowledged), the said [*grantee*] hereby, as beneficial owner, releases and conveys unto the said [*grantor*] and his heirs, All that road or way, or right of way by the within written indenture granted to the said [*grantee*] into, upon, through, or over the hereditaments shown on the plan drawn in the margin of the within written indenture, and therein edged round with blue [and all other easements (*h*), commodities, rights, claims, and privileges whatsoever, which he the said [*grantee*] now has in, over, through, upon, or in respect of the said hereditaments and premises, or any of them], to the intent that the said [*grantor*] and his heirs shall and may, at all times hereafter, hold and enjoy the same hereditaments and premises, with their appurtenances, free from the said right of way [and all other easements, privileges, rights, claims, and demands whatsoever of or by the said [*grantee*], his heirs or assigns]. Parties. Release.

In witness, &c. (*i*).

(*g*) The deed will require an *ad valorem* stamp as a conveyance on sale upon the consideration paid for the release. Stamp.

(*h*) The effect of these words should be considered, as the releasor may have other easements which he does not intend to relinquish.

(*i*) As to rights of way and other easements, see Vol. I. p. 402, note (*s*).

XVII. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

XVII. RELEASE *of a* Right *of* Way *in* Consideration *of a* Grant *of a* New Right *of* Way *over other* Lands.

THIS INDENTURE (*k*), made the —— day of ——, 19—, Between [*releasor*], of, &c., of the one part, and [*releasee*], of, &c., of the other part: Whereas by an indenture dated the —— day of ——, 19—, and made between [*parties*] full and free right or liberty was granted to the said [*grantee*], his heirs and assigns, and his and their servants and agents, and the tenants and occupiers for the time being of the messuage and farm of the said [*grantee*], called the —— Farm, to use in manner and for the purposes therein mentioned through, along, and over a road or way therein described and delineated in the map or plan annexed to the same indenture and also delineated in the map or plan hereunto annexed and thereon coloured red; and by the indenture now in recital, the said [*grantee*] covenanted with the said [*grantor*] to keep the same road or way in repair as therein mentioned: And whereas [*recite any changes of ownership which have taken place as regards the dominant and servient tenements, so as to show the title of the present releasor and releasee thereto respectively*]: And whereas the said [*releasee*] is erecting a mansion house with the stables, garage, outhouses, and buildings appurtenant thereto, and planting and laying out pleasure grounds in and upon the closes of land described in the hereinbefore recited indenture, and now intersected by the road or way the right or liberty to use which was granted to the said [*grantee*] by the same indenture as aforesaid, and has accordingly requested the said [*releasor*] to release the said right or liberty in manner hereinafter appearing, in consideration of the grant of a new right of way hereinafter mentioned over other hereditaments of the said [*releasee*] hereinafter described, and the said [*releasor*] being satisfied that such last mentioned right or liberty of way will be fully as convenient to him and to the tenants and occupiers of the said —— Farm as the right or liberty hereby released has agreed to make and execute such release accordingly: NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of grant of right of way:

of agreement for release, and new grant.

(*k*) This deed should be executed in duplicate: the original deed will require a stamp of 10*s.*; the counterpart will require a stamp of 5*s.*: see Stamp Act, 1891, s. 72.

XVII. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

1. In pursuance of the said agreement and in consideration of the grant by the said [*releasee*] hereinafter contained, he the said [*releasor*] hereby, as beneficial owner, releases and conveys unto the said [*releasee*] and his heirs, ALL right or liberty of road or way so as aforesaid granted to the said [*grantee*] by the hereinbefore recited indenture, upon, through, or over the hereditaments therein mentioned, to the intent that the said [*releasee*], his heirs and assigns, shall at all times hereafter hold and enjoy the same hereditaments, with their appurtenances, free from the said right or liberty of way of or by the said [*releasor*], his heirs or assigns, or any of the tenants or occupiers of —— Farm aforesaid.

Release of right of way.

2. In further pursuance of the said agreement and in consideration of the premises, he the said [*releasee*] hereby, as beneficial owner, grants unto the said [*releasor*], his heirs and assigns, full and free right and liberty for the said [*releasor*], his heirs and assigns, and his and their servants and agents, and the tenants or occupiers of —— Farm aforesaid, at all times hereafter by night and by day, and for all purposes to go, return, pass, and repass, with or without horses, carts, waggons, or carriages, traction engines, motor cars [*or*, other than traction engines, motor cars], whether used for pleasure or for trade purposes [or any vehicles propelled or drawn otherwise than by horse power or by human power] (*l*), laden or unladen, and also to drive cattle, sheep, and other animals in, through, along, and over a new road or way recently formed and fenced off by the said [*releasee*], and indicated by dotted blue lines in the plan hereunto annexed, and which road or way is of the width of —— feet or thereabouts, and —— yards in length or thereabouts, and runs between the points marked A. and B. in the said last mentioned plan: AND the said [*releasor*] hereby covenants with the said [*releasee*] that he the said [*releasor*], his heirs and assigns, will from time to time henceforth at his and their own expense keep repaired and amended in a proper and workmanlike manner the road or way, the right or liberty to use which is hereby granted, and also the gates erected by the said [*releasee*] at the extremities thereof, and will

Grant of new right of way.

Covenant to repair road, &c.

(*l*) If the words in the preceding bracket are used, the words in this bracket will be omitted.

XVII. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

repair and renew the quickset hedge or fence lately planted by the said [*releasee*] on both sides of the said road or way.

3. In consideration of the premises, the said [*releasee*] hereby releases the said [*releasor*] from the covenant on his part hereinbefore recited or referred to for keeping in repair the said road or way, the right or liberty to use which is hereby released, and all other covenants and agreements on the part of the said [*releasor*] contained in the hereinbefore recited indenture of the —— day of ——, 19—; And also from all actions, proceedings, claims, and demands whatsoever for or by reason of the breach, non-observance, or non-performance of any such covenants or agreements, or for or by reason of any act, matter or thing in anywise relating to the premises.

Release of covenant for repair of original road.

In witness, &c.

See also Release of Power of Revocation, Vol. I. p. 65.

SEPARATION DEEDS.

PRECEDENTS.

I. DEED *of* Separation, *the* Husband *allowing the* Wife *an* Annuity. Covenant *by the* Wife *and* Trustees *to* Indemnify *the* Husband *against the* Wife's Debts. *Other usual* Covenants. Proviso *vacating the* Deed *on* Reconciliation. (*A* Concise Form.)

THIS INDENTURE (*a*), made the —— day of ——, 19—, Between [*husband*], of, &c., of the first part; [*wife*], the wife of the said [*husband*], now residing at, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

Parties.

(*a*) Stamp, 10*s.*, and *ad valorem* duty at the rate of 2*s.* 6*d.* for every 5*l.* or fractional part of 5*l.* payable in respect of the annuity: *Lewis* v. *I. R. Commrs.*, [1898] 2 Q. B. 290. The covenant by the wife not to compel the husband to live with her constitutes a valuable consideration for the husband's covenant, and brings the deed within the exception in sub-sect. 5 of sect. 74 of the Finance (1909-10) Act, 1910, so as to avoid the *ad valorem* stamp as a voluntary disposition *inter vivos* under that section: see *Re Weston*, [1900] 2 Ch. 164; K. & E. 10th ed. vol. 2, p. 552, note.

1. SEPARATION DEED. *Concise form.*

Recital of agreement for separation.

WHEREAS unhappy differences have arisen between the said [*husband*] and [*wife*], by reason whereof they have mutually agreed [but at the request of the said [*husband*] *or* [*wife*]] to live separate and apart from each other; and the said [*husband*] has agreed to make to the said [*wife*] an allowance of the annual sum of £——, during the joint lives of herself and the said [*husband*], for her maintenance and support: AND WHEREAS the said [*trustee*] and [*trustee*] have agreed to act as trustees hereof as hereinafter mentioned.

Mutual covenants (*b*).

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and for the considerations herein appearing, the said [*husband*], so far as the covenants and stipulations herein contained ought to be performed or observed by him, his heirs, executors, or administrators, hereby covenants with the said [*wife*], and, as a separate covenant, with the said [*trustees*] and the said [*wife*], so far as the covenants and stipulations herein contained ought to be performed or observed by her or her heirs, executors, or administrators, hereby covenants (*c*) with the said [*husband*], and, as a separate covenant, with the said [*trustees*]; and the said [*trustees*] respectively, so far as the covenants and stipulations herein contained ought to be performed or observed by themselves, or the said [*wife*], or their respective heirs, executors, or administrators, or any of them, hereby covenant with the said [*husband*] as follows, that is to say:—

Wife may live apart from husband.

1. The said [*wife*] may at all times hereafter live separate and apart from the said [*husband*], and free from his marital control and authority, as if she were sole and unmarried, and may from

(*b*) The Court will enforce the covenants of a separation deed by specific performance (*Wilson* v. *Wilson*, 1 H. L. C. 538; *Hart* v. *Hart*, 18 Ch. D. 670), or by injunction: *Besant* v. *Wood*, 12 Ch. D. 605; *Hart* v. *Hart*, *sup.* Renewal of cohabitation avoids the deed as to provisions in favour of the husband or wife (*Nicol* v. *Nicol*, 31 Ch. D. 524), but it may remain in force as a settlement for the benefit of children if provision is made for them: *Re Spark's Trusts*, [1904] 1 Ch. 451; 2 Ch. 121. See, further, as to separation deeds, Pollock on Contracts; and the notes to *Stapilton* v. *Stapilton*, White & Tudor's L. C.; and Key & Elph. 10th ed. vol. 2, notes, pp. 551 *et seq.*

(*c*) This will bind all separate property which she may acquire in the future: see the Married Women's Property Act, 1893, s. 1; and Wolstenholme, 10th ed. pp. 345, 346; K. & E. 10th ed. vol. 2, p. 552; *Paquin, Ltd.* v. *Beauclerk*, [1906] A. C. 148. The wife can now contract directly with the husband (*Macgregor* v. *Macgregor*, 21 Q. B. D. 424; *Sweet* v. *Sweet*, [1895] 1 Q. B. 12), but it is desirable to have trustees.

I. SEPARATION DEED. *Concise form.*

time to time reside at such place or places, and in such manner [and carry on such trade, business or occupation], as she shall think proper, without any interference on the part of the said [*husband*].

Husband and wife not to molest each other, &c. (*e*).

2. Neither of them the said [*husband*] and [*wife*] shall directly or indirectly molest or interfere with the other of them, or compel or endeavour to compel the other of them to cohabit or live with him or her by any legal proceedings for restitution of conjugal rights, or otherwise howsoever.

Condonation of previous offence (*f*).

[3. Neither of them the said [*husband*] and [*wife*] shall take any proceedings against the other of them for the purpose of obtaining a divorce, or judicial separation, in respect of any misconduct which has or is alleged to have taken place on the part of the other of them.]

Husband to pay an annuity to wife (*g*).

4. The said [*husband*] shall during the joint lives of himself and the said [*wife*], or until they shall mutually agree to live together again, and so long as the said [*wife*] [shall remain chaste and (*h*)] shall perform and observe the covenants and agree-

(*e*) As to what is "molestation," see *Fearon* v. *Aylesford*, 14 Q. B. D. 792; *Hunt* v. *Hunt*, [1897] 2 Q. B. 304, 547.

(*f*) This clause ought not to be inserted as a matter of course without instructions, but without it the deed will not be a bar to a suit (*Moore* v. *Moore*, L. R. 12 P. 193), as it is if this clause is inserted (*Marshall* v. *M.*, 5 P. D. 19; *Clark* v. *C.*, 10 P. D. 188; *Aldridge* v. *A.*, 13 P. D. 210; but see, as to the wife, *Cahill* v. *C.*, 8 App. Cas. 420), unless the party setting up the deed has, in effect, by his conduct repudiated it: *Balcombe* v. *Balcombe*, [1908] P. 176. As to the effect of subsequent acts of misconduct, see *Kunski* v. *Kunski*, 23 L. T. R. 615.

(*g*) Sometimes it is arranged that the husband shall make to his wife a weekly allowance, as follows:—

"The said [*husband*] shall, during the joint lives of himself and the said [*wife*], if they shall so long mutually agree to live separately from each other, pay to the said [*wife*], for her separate use, but without power of anticipation, on every Saturday, commencing on the —— day of —— next, the clear weekly sum of £——."

As to whether this form of payment will avoid the payment of *ad valorem* duty, see *Clifford* v. *I. R. Commrs.*, [1896] 2 Q. B. 187; and *Lewis* v. *I. R. Commrs.*, *ubi sup.*

As to whether the payment of the annuity will continue should the parties resume cohabitation, see *ante*, p. 333, note (*b*).

Dum casta clause.

(*h*) As to the importance of these words, see *Sweet* v. *S.*, [1895] 1 Q. B. 12; *Wasteneys* v. *W.*, [1900] A. C. 446; and see also K. & E. 10th ed. vol. 2, p. 554, note (*a*).

ments on her part herein contained, pay to the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being hereof an annuity of £—— in trust for the said [*wife*] as her separate estate, but without power of anticipation, by equal quarterly payments on the usual quarter days, the first of such payments to be made on the —— day of ——, 19—, which annuity shall be apportionable according to law at the commencement and termination thereof (*i*): PROVIDED ALWAYS, that if the said [*wife*] shall survive the said [*husband*], and the said annuity shall not have been forfeited or otherwise determined in his lifetime, then the representatives of the said [*husband*] shall continue to pay such annuity in manner aforesaid until the said [*wife*] shall marry again or die.

I. SEPARATION DEED. *Concise form.*

5. The said [*husband*] shall permit and suffer the said [*wife*] to have, possess, and enjoy for her exclusive use and benefit in the same manner in all respects as if she were a *feme sole* all the articles of wearing apparel and personal use and ornament, and all personal property and effects whatsoever now in her possession.

Wife to have her chattels for her separate use (*j*).

6. If the said [*wife*] shall die in the lifetime of the said [*husband*] all her separate estate and property, real and personal, of which she shall not have disposed in her lifetime, or by will, shall, subject to her debts and liabilities, go and belong to the persons or person who would have become entitled thereto if the said [*wife*] had then died intestate and without ever having been married. AND in the same event, the said [*husband*] shall permit her will (if any) to be proved, or administration to her personal estate and effects to be taken out by the persons or person who would have been entitled so to do if she had then died without ever having been married.

Surviving husband excluded from wife's property (*k*).

7. The said [*wife*], her heirs, executors, and administrators, and also the said [*trustees*] and their respective heirs, executors, or

Wife and trustees to

(*i*) Under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), annuities are considered as accruing from day to day, and are accordingly apportionable in respect of time.

(*j*) No provision is, of course, necessary for the protection of the wife's separate property, unless she, having married before 1883, wishes to dispose of freehold or leasehold property, in which case the husband must divest himself of the legal estate, so that she may be able to convey the legal estate as well as the beneficial interest without his concurrence; but this should be done by a separate deed to avoid bringing the separation deed on the title.

(*k*) See *Allen* v. *Humphrys*, L. R. 8 P. D. 16.

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administrators, shall at all times hereafter keep indemnified the said [*husband*], his heirs, executors, and administrators, against all the debts and liabilities which the said [*wife*] has already contracted or incurred, or which she shall or may at any time hereafter contract or incur, and against all actions, proceedings, accounts, claims, demands, costs, charges, losses, damages, and expenses for or on account of such debts or liabilities, or anything in anywise relating to the premises.

indemnify husband against wife's debts (*l*).

Husband if called on to pay wife's debts may deduct amount from annuity.

8. In case the said [*husband*] shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge, any debt or liability which the said [*wife*] has already contracted or incurred, or which she shall or may at any time hereafter contract or incur, then and in every such case it shall be lawful for the said [*husband*] to deduct, retain, and reimburse to himself out of the said annuity of £—— the amount which he the said [*husband*] shall have so paid in respect of such debt or liability, together with all costs and expenses which he shall have paid or incurred on account thereof; but so that this present proviso shall not render the said [*husband*] liable to the payment of any debts of the said [*wife*], or prejudice any right or remedy of the said [*husband*] under the covenant for indemnity of the said [*trustees*] hereinbefore contained.

Provision for reconciliation or divorce.

9. PROVIDED ALWAYS, that in case the said [*husband*] and [*wife*] shall at any time hereafter with their mutual consent come together, and cohabit with each other (*ll*) [or if their marriage shall be dissolved or if they shall be judicially separated from each other in respect of anything done or suffered by either party after the execution of these presents], then and in such case [*or*, then and in either of such cases] the said annuity of £—— shall cease and be no longer payable, and thenceforth all the covenants and provisions herein contained shall become void, but without prejudice to any act previously done hereunder, or any proceedings on the part of any of the parties hereto in respect of any breach then previously committed of all or any of the said covenants or provisoes.

(*l*) The wife has no implied authority to pledge her husband's credit after a separation deed: see *Eastland* v. *Burchell*, L. R. 3 Q. B. D. 432.

(*ll*) As to what amounts to cohabitation, see *Rowell* v. *Rowell*, [1900] 1 Q. B. 9. See also, as to this clause, *Ruffles* v. *Alston*, 19 Eq. 539; *Re Spark*, [1904] 1 Ch. 451.

10. The statutory power of appointing new trustees of these presents in the place of the said [*husband's trustee*] or any trustee to be appointed in his place shall be vested in the said [*husband*], and the statutory power of appointing new trustees in the place of the said [*wife's trustee*] or any trustee to be appointed in his place shall be vested in the said [*wife*]. Power to appoint new trustees.

In witness, &c.

II. DEED *of* Separation *between* Husband *and* Wife. Special Clause *against* Molestation *by* Husband *or* Wife. Settlement *by the* Husband *of a* Sum *of* Stock *for the benefit of the* Wife, *for her* Life, *with* Remainders *for the benefit of* Herself *and the* Children *of the* Marriage. Provisions *as to the* Custody, Maintenance, *&c. of* Children. *Usual* Indemnity Clause *by* Trustees.

THIS INDENTURE (*m*), made the —— day of ——, 19—, Between [*husband*], of, &c., of the one part; [*wife*], of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

Whereas the marriage between the said [*husband*] and [*wife*], his wife, took place on or about the —— day of ——, 19—, and there is issue of the marriage —— children, namely [*state names of children*]. Recitals: of marriage and birth of children;

And whereas unhappy differences have arisen between the said [*husband*] and [*wife*], in consequence whereof they have mutually agreed to live separate and apart from each other, and to enter into the arrangement hereinafter contained. of agreement for separation;

And whereas, as part of such arrangement, the said [*husband*] has this day transferred into the names of the said [*trustees*] a sum of £—— Preference Stock in the —— Railway Company, the property of him the said [*husband*] (hereinafter called "the said Preference Stock"), To the intent that they shall stand possessed thereof, and the dividends, interest, and annual produce of transfer of stock to trustees;

(*m*) It would seem that the deed should bear a 10*s.* stamp, and also an *ad valorem* stamp as a settlement at the rate of 5*s.* for every 100*l.* or fractional part of 100*l.* settled, and not the *ad valorem* stamp under sect. 74 of the Finance (1909-10) Act, 1910: see *ante*, p. 332, note (*a*); but the stamp should be adjudicated.

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upon such trusts, as are hereinafter declared of and concerning the same.

And whereas the said [*trustees*] have, at the request of the said [*husband*] and [*wife*], agreed to act as trustees of these presents for the purpose of the arrangements intended to be hereby made, and to enter into the covenants on their part and stipulations hereinafter contained.

of agreement of trustees to act.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and for the consideration herein appearing, the said [*husband*], so far as the covenants and stipulations herein contained ought to be performed or observed by him, his heirs, executors, or administrators, hereby covenants with the said [*wife*], and as a separate covenant with the said [*trustees*]; And the said [*wife*], so far as the covenants and stipulations herein contained ought to be performed or observed by her, her heirs, executors, or administrators, hereby covenants with the said [*husband*], and as a separate covenant with the said [*trustees*]; And the said [*trustees*], so far as the covenants and stipulations herein contained ought to be performed or observed, on the part of the said [*wife*], or of them the said [*trustees*], or their respective heirs, executors, or administrators, or any of them, hereby respectively covenant with the said [*husband*] as follows, that is to say:—

Wife may live apart from husband.

1. [*Proviso that the wife may live apart from her husband*, ut ante, *Precedent I.*, *cl.* 1, *p.* 333.]

Covenant against molestation by husband.

2. The said [*husband*] shall not, nor will molest, disturb, or interfere with the said [*wife*] in her manner of living or otherwise, or compel or endeavour to compel her to cohabit or live with him by any legal proceedings for restitution of his conjugal rights or otherwise howsoever, or sue, prosecute, or in any way molest or disturb any member or members of her family or any other person or persons for receiving, harbouring, protecting, or assisting her.

Covenant against molestation by wife.

3. The said [*wife*] shall not, nor will molest, disturb, or interfere with the said [*husband*], nor at any time or times hereafter commence or institute any action or proceedings for restitution of conjugal rights, or compel or attempt to compel him to allow to her any alimony or maintenance for herself, or the said children, other than such allowance as is hereinafter provided.

Mutual covenants against proceedings for divorce, &c.

4. No proceedings shall be instituted or prosecuted by or on behalf of either of them the said [*husband*] and [*wife*] against the other of them for the purpose of obtaining a divorce or judicial

separation, or otherwise in respect of any cause of complaint which now exists or has arisen before the date of these presents; and all misconduct (if any) which has been committed or permitted by either of them against the other shall be deemed to have been hereby forgiven and condoned; AND in case at any time hereafter any proceedings shall be instituted or prosecuted by either of them against the other in respect of any cause of complaint which may arise hereafter, no misconduct which has, or is alleged to have been committed or permitted before the execution of these presents, nor any act, matter, or thing relating to any such misconduct, shall be pleaded, or alleged, or admitted in evidence.

Trust for investment.

5. The said [*trustees*] and the survivor of them, and the executors, administrators, or assigns of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter collectively referred to as "the said trustees or trustee"), shall either allow the said Preference Stock, or any part thereof, to remain in the actual state of investment thereof, or shall at any time or times, with the consent of the said [*husband*] and [*wife*], during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee, sell the same or any part thereof, and invest the proceeds of such sale in their or his names or name in or upon any stocks, funds, or securities hereby authorised; AND may from time to time, with such consent and at such discretion as aforesaid, transpose the said investments into others of any nature hereinafter authorised.

Trusts of settled fund.

6. The said trustees or trustee shall stand possessed of the said Preference Stock or the investments for the time being representing the same, and dividends, interest, and income thereof respectively, upon the trusts following, that is to say: In trust to pay unto the said [*wife*] or allow her to receive the income of such trust fund during her life, but without power of anticipation, as well for the maintenance and support of herself as for the maintenance, clothing, and education of the said [*children*] during their respective minorities: AND from and after the death of the said [*wife*], if she shall die in the lifetime of the said [*husband*], then in trust to pay unto the said [*husband*], or allow him to receive the income of the said trust fund during his life; AND from and after the death of the survivor of them the said [*husband*] and [*wife*] shall

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stand possessed of the capital and future income of the said trust fund, in trust for such one or more of the said [*children*] as, being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter, shall attain that age or marry under that age, and if more than one in equal shares; but if all the said children shall die before attaining a vested interest in the said trust fund, then the trustees or trustee for the time being shall, from and after the death of the said [*husband*], stand possessed of the capital and future income of the said trust fund [or of so much thereof as shall not have been applied under any of the trusts herein expressed], as to one equal moiety of such capital and income, in trust for the said [*husband*] absolutely; And as to the other equal moiety thereof, upon and for such trusts, interests and purposes as the said [*wife*] shall by deed, will, or codicil appoint, and in default of and subject to any such appointment upon trust for the statutory next of kin of the said [*wife*] as if she had died intestate and without ever having been married.

7. [*Advancement clause, if desired: see* post, *p.* 348, *clause* 7.]

8. [*Wife to have her chattels for her separate use: see Precedent I., cl.* 5.]

9. [*Surviving husband excluded from wife's property: see Precedent I., cl.* 6.]

Wife to have custody of children (*n*).

10. The said [*wife*] shall have the sole custody and control of and over all and every of the said [*children*] and of their education and bringing up, until they shall respectively attain the age of —— years, without any interference on the part of the said [*husband*].

Provision as to maintenance of children (*o*).

11. The said [*wife*] hereby accepts the provision made as aforesaid by clause 6 hereof as ample and sufficient for the maintenance and support of herself, and for the maintenance, clothing, and education of the said [*children* until they shall respectively attain the age of —— years, and the said [*wife*] shall accordingly pro-

(*n*) This agreement is valid under the Custody of Infants Act, 1873, s. 2, subject to the discretionary power of the Court under sect. 5 of the Guardianship of Infants Act, 1886. As to the exercise of this discretion, see *Re A. and B.* (*Infants*), [1897] 1 Ch. 786.

(*o*) As to the liability of a married woman having separate property to maintain her children and grandchildren, see Married Women's Property Act, 1882, s. 21.

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vide and pay for the maintenance, clothing, and education of all and every of the said [*children*] until they shall attain that age out of her own moneys, including the income of the said trust fund hereby made payable to her during her life as aforesaid. [But the said [*husband*] shall pay the funeral expenses of any child who shall die while residing or being with or under the control of the said [*wife*].]

Provision as to education, &c. of sons (*oo*).

12. The said [*male children*] shall, as soon as they shall respectively attain the age of —— years, be placed at the expense of the said [*husband*] at such schools in England, or with the previous consent in writing of the said [*wife*] [*or, if preferred,* of the said trustees or trustee] elsewhere, as he shall from time to time think fit; and shall thereafter pass their holidays or any other interval of time during which they shall not be at any school, at such places and in such manner as the said trustees or trustee shall from time to time direct, having regard to the reasonable wishes of the said [*husband*] and [*wife*].

Provisions as to education, &c. of daughters.

13. The said [*wife*] shall have full liberty at her own expense either to place all and every of the said [*female children*] at such schools in England [or elsewhere], as she shall from time to time think fit, or to keep them in her own custody, and maintain and educate them until they shall respectively attain the age of twenty-one years or marry under that age, at such place or places in England [or elsewhere], as she may from time to time reside in: AND such of them the said [*female children*], as shall for the time being be at such school, shall pass their holidays with the said [*wife*], or with such persons or person as she shall from time to time direct.

Access to children (*p*).

14. The said [*husband*] and [*wife*] respectively shall at all reasonable and convenient times (to be fixed by the trustees in case of dispute) have access to and communication with the children or child for the time being living with or under the control of the other of them or at school.

Covenant for indemnity of husband against wife's debts.

15. The said [*wife*], her heirs, executors, and administrators, and also the said trustees or trustee, and their or his respective heirs, executors, or administrators, shall, at all times hereafter,

(*oo*) See *Gandy* v. *Gandy*, 30 Ch. D. 57.

(*p*) This does not prevent the parent from taking the children abroad: see *Hunt* v. *Hunt*, 28 Ch. D. 606.

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effectually keep indemnified the said [*husband*], his heirs, executors, and administrators, from all debts and liabilities which the said [*wife*] shall or may hereafter contract or incur, and from and against all actions, proceedings, accounts, claims, demands, costs, charges, losses, damages, and expenses whatsoever, for or on account of any such debts or liabilities.

Covenant for further assurance.

16. Each of them, the said [*husband*] and [*wife*], or their respective heirs, executors, or administrators, shall, at all times hereafter, execute and do all such assurances and things as the other of them, or his or her executors, administrators, or assigns, or the said trustees or trustee, shall reasonably require, for the purpose of giving full effect to these presents and the covenants, stipulations, and provisions herein contained.

Provision for reconciliation, &c.

17. [*Provision for reconciliation, divorce, &c.*, ut ante, *p.* 336; *and continue, if such is the intention, as follows:*] AND in such case the trustees or trustee for the time being of these presents shall stand possessed of and interested in the said trust fund, and the income thereof or so much thereof as shall not have been applied or disposed of, under or by virtue of these presents upon trust for the said [*husband*] absolutely, or as he shall direct.

Clause as to destination of settled fund on reconciliation.

18. [*Investment clause, see Settlements*, post, *p.* 355.]

Provision as to appointment of new trustees.

19. The power of appointing a new trustee in the place of the said [*husband's trustee*], or of any trustee to be appointed in his place, shall be vested in the said [*husband*]; and the power of appointing a new trustee in the place of the said [*wife's trustee*], or of any trustee to be appointed in his place shall be vested in the said [*wife*].

IN WITNESS, &c.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

PERSONAL SETTLEMENTS.

PRECEDENTS.

I. SETTLEMENT *on* MARRIAGE *of* STOCK *belonging to* WIFE. INCOME *to be* PAID *to* WIFE *without* POWER *of* ANTICIPATION *for her* LIFE; *and after her* DEATH *to* HUSBAND *for his* LIFE. TRUSTS *for* ISSUE, *and usual* CLAUSES. ULTIMATE TRUST *for* WIFE *in default of* ISSUE. COVENANT *to* SETTLE AFTER-ACQUIRED PROPERTY. POWER *for* WIFE, *on* FUTURE MARRIAGE, *to* WITHDRAW FUNDS *from* SETTLEMENT *in* PROPORTION *to* NUMBER *of* CHILDREN *of* INTENDED MARRIAGE. SETTLEMENT *by* HUSBAND *of* POLICY *of* ASSURANCE *on his own* LIFE [*or*, PAYABLE *at a* FIXED DATE] (*a*). TRUSTEE CLAUSES.

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), spinster, of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife (*c*); AND WHEREAS, pursuant to

Parties.

Recitals: of intended marriage;

(*a*) Notice of the settlement should be given to the insurance company. As to the power of a woman married since 1882, or a woman married before 1883, so far as relates to property acquired since 1882, to deal with her property and to contract as a *feme sole*, see the Married Women's Property Acts, 1882, 1893, 1907 and 1908; and see K. & E. 10th ed. vol. 2, p. 579, note (*e*).

M. W. P. Acts.

(*b*) Stamp, 5*s*. per 100*l*. (see Stamp Act, 1891, sched. "Settlement") on the value according to the average price on the day of the date of the settlement (see Stamp Act, 1891, s. 6) of the stock brought into settlement, and 10*s*. in respect of the covenant to settle after-acquired property, and a further *ad valorem* duty at 5*s*. per 100*l*. on the amount of the policy: see Stamp Act, 1891, s. 104; *Duke of Northumberland* v. *I. R. Commrs.*, [1911] 2 K. B. 1011. As to estate duty on policy, see *Lethbridge* v. *Att.-Gen.*, [1907] A. C. at p. 23. Marriage settlements are not affected by the Finance (1909-10) Act, 1910. The stamps should be adjudicated in all cases where value has to be ascertained.

Stamp.

(*c*) As to marriage with a deceased wife's sister, see *Phillips* v. *Probyn*, [1899] 1 Ch. 811; Deceased Wife's Sister's Marriage Act, 1907; and *Re Whitfield*, [1911] 1 Ch. 310.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

an agreement made upon the treaty for the said intended marriage, the sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, belonging to the wife has been transferred into the names of the said [*trustees*], to be held by them in trust for the said wife until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared of and concerning the same: AND WHEREAS upon the treaty for the said intended marriage it was agreed that these presents should contain such provision as is hereinafter contained for settling the other or future acquired property of the wife, except as hereinafter mentioned.

of transfer of stock to trustees;

of agreement for settlement of wife's after-acquired property.

AND WHEREAS the husband is absolutely entitled to a policy of assurance effected in his own name for the sum of £——, payable on his death [*or*, on the —— day of ——, whichever shall be the earlier], with the —— Assurance Society, dated, &c., and numbered ——, and under the annual premium of £——, and upon the treaty for the said intended marriage it was agreed that the same policy and the moneys to become payable thereunder should be settled in manner hereinafter appearing.

Title to, and agreement to settle policy on husband's life.

Testatum. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Declaration of trusts of stock;

1. The said [*trustees*], their executors, administrators, and assigns, shall stand possessed of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, in trust for the wife until the solemnization of the said intended marriage; AND thereafter upon trust that the said [*trustees*], or the survivors or survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall either allow the said stock to remain in its present state of investment so long as the trustees or trustee may think fit, or shall, at any time or times, with the consent in writing of the husband and wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, sell the same stock, or any part thereof, and invest the proceeds of such sale or sales in the names or name of the trustees or trustee, in or upon any stocks, funds, or securities hereby authorised: AND may from time to time, with such consent or at such discretion as aforesaid, vary or transpose any of the said investments into others of any nature hereinafter authorised.

trust for investment;

power to vary investments.

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2. The trustees or trustee shall, during the joint lives of the husband and wife, pay the income of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, and of the investments for the time being representing the same (hereinafter called "the wife's fund"), unto the wife without power of anticipation (*e*).

Trust of income for wife during joint lives of herself and husband without power of anticipation (*d*).

(*d*) If it is desired that the husband shall take a determinable life interest only, the following clauses may be substituted for clauses 2 and 3 in the text:—

"The trustees or trustee shall pay the income of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, and of the investments for the time being representing the same (hereinafter called 'the wife's fund'), to the wife during her life without power of anticipation.

Trust giving the husband a determinable life interest.

"After the death of the wife, if the husband shall survive her, and if no act or event shall have been done or happened [other than a consent to any exercise of the power of advancement hereinafter contained*] whereby the said income if belonging to him absolutely would become vested in or charged in favour of any other person or persons or corporation,† then the trustees or trustee shall pay the said income to the husband during his life or until any such act or event as aforesaid shall be done or happen.

"After the death of the wife and the failure or determination during the life of the husband of the trust hereinbefore declared in his favour of the said income, the trustees or trustee shall, during the residue of his life, or during such shorter period, either continuous or discontinuous, as they or he shall in their absolute discretion think fit, pay all or any part of the said income or apply the same for the maintenance and personal support or benefit of all or any one or more of the following persons, namely, the husband [and his wife‡ (if any)] and his children, or remoter

(*e*) It is no longer necessary to insert the words "for her separate use," but the restraint on anticipation is useful as a protection against the husband's influence: see *Re Lumley*, [1896] 2 Ch. 690.

* See *Re Hodgson*, [1913] 1 Ch. 34.

† "Person" probably includes "corporation": see *Willmott* v. *London, &c. Co.*, [1910] 2 Ch. 525.

‡ See *Re Drew*, 43 Sol. J. 126.

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3. From and after the death of such one of them, the husband and wife, as shall first die (*ee*), the trustees or trustee shall pay the income of the wife's fund to the survivor of them, and his or her assigns, during his or her life, but so that the wife shall not during coverture have power to anticipate such reversionary life interest.

Trust for survivor for life;

4. From and after the death of the survivor of them, the husband and wife, the trustees or trustee shall stand possessed of the wife's fund and the income thereof, in trust for all or such one or more exclusively of the others or other (*eee*) of the children or remoter issue of the said intended marriage [such remoter issue to be born and take vested interests within twenty-one years from the death of the survivor of them, the husband and wife (*f*)], at such age or time or respective ages or times, and if more than one in such shares, and with such future, executory, or other trusts for the benefit of the said issue, or some or one of them, and with such

remainder for issue as husband and wife shall appoint (*full form*);

issue for the time being, whether minors or adults, and the other persons or person for the time being entitled absolutely, contingently or otherwise, to the wife's fund, or any of them under the trusts herein contained, to take effect after the death of the husband, in such proportions and manner as the trustees or trustee shall in their absolute discretion think proper. Subject to the discretionary power hereinbefore contained, the trustees or trustee shall, during the husband's life, hold the said income, or the unapplied part thereof, upon the trusts which would for the time being be applicable thereto if the husband were then dead."

As to determinable trusts in favour of a husband, see Elph. Introd. 6th ed. 360; Vaizey on Settlements, 947. The life interest of a husband in his own property may be determined on voluntary alienation (not on bankruptcy): see *Brooke* v. *Pearson*, 27 Beav. 181; *Knight* v. *Browne*, 30 L. J. 649; *Re Perkins*, [1912] W. N. 99. See, too, K. & E. 10th ed. vol. 2, p. 581, note (*e*), and p. 584, note (*b*).

(*ee*) As to estate duty, see *Att.-Gen.* v. *Wood*, [1897] 2 Q. B. 102; *Att.-Gen.* v. *Glossop*, [1907] 1 K. B. 163.

(*eee*) These words of exclusion are no longer necessary: see 1 Will. 4, c. 46; and 37 & 38 Vict. c. 37.

(*f*) The insertion of the words in brackets is useful as a reminder of the rule against perpetuities, but it is not necessary, and the words may be omitted, if desired. An appointment under a power not so restricted will be good, provided the appointment does not itself violate the rule against perpetuities. The power must be exerciseable within, and not beyond, the limit of the rule: see *Re De Sommery*, [1912] 2 Ch. 622.

provisions for the maintenance, education, advancement, and benefit of such children or issue or some or one of them, either after the death of the husband and wife, or during their joint lives, or the life of the survivor of them, with their, his, or her consent in writing, at the discretion of the trustees or trustee, or of any other person or persons, and subject to such restrictions, conditions, and provisions, and generally in such manner in all respects (*g*) as the husband and wife shall by any deed or deeds, revocable or irrevocable, jointly appoint; AND in default of such joint appointment, and so far as no such appointment shall extend, then, as the survivor of them shall in like manner, or by will or codicil appoint; AND in default of and so far as no appointment under either of the powers hereinbefore contained shall extend, in trust for all the children or any the child of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry [with the consent of her parents or parent, or guardians or guardian], and if more than one in equal shares.

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remainder as survivor shall appoint;

trust, in default of appointment, for children equally at twenty-one or marriage;

5. PROVIDED ALWAYS, that no child who or whose issue shall take any part of the wife's fund by virtue of any appointment made under either of the powers lastly hereinbefore contained shall, in the absence of an express declaration to the contrary in any such appointment, take any share of the unappointed part of the wife's fund without bringing the appointed share or shares into hotchpot and accounting for the same accordingly.

hotchpot clause (*h*);

6. The trustees or trustee shall, after the death of the husband and wife, apply the whole or such part as they or he shall think fit, of the income of the expectant or presumptive share of any child of the said intended marriage under the trusts hereinbefore

maintenance clause (*i*);

(*g*) A shorter form of such a power may be used, as follows:—

"In trust for all or any of the children or remoter issue of the said intended marriage in such shares and with such provisions and generally in such manner in all respects as the husband and wife shall," &c., *as above*.

Short form of trust for issue.

(*h*) The value of an appointed share is to be ascertained at the death of the tenant for life: *Re Kelly*, [1910] 1 Ch. 78.

(*i*) Express powers for maintenance, education and accumulation of surplus may now generally be omitted in reliance on the statutory provisions: see Conveyancing Act, 1881, s. 43.

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contained, for or towards the maintenance and education, or otherwise for the benefit of such child [whether or not there is any other fund applicable to provide for any such purpose]: And may, at their or his absolute discretion, either themselves or himself so apply the same income, or any part thereof, or may pay the same to the guardian or guardians of such child for the purposes aforesaid without seeing to the application thereof: And shall, during the suspense of absolute vesting of any such share as aforesaid, accumulate all the residue (if any) of the same income by way of compound interest, by investing the same and the resulting income thereof in any of the investments hereby authorised, for the benefit of the person or persons who shall eventually become entitled to the principal fund or share from which the same respectively shall have proceeded; with power for the trustees or trustee to apply the accumulations of any preceding year or years in or towards the maintenance or education of the person or persons for the time being presumptively or expectantly entitled to the same, in the same manner as such accumulations might have been applied in case they had been income arising from the original trust fund in the year in which the same shall be so applied.

accumulation clause;

power of advancement;

7. The trustees or trustee may at any time or times after the death of the husband and wife, or in their, his, or her lifetime, with their, his, or her consent in writing, raise any part or parts, not exceeding in the whole one-half of the then vested, contingent, presumptive, or expectant share, of any child or remoter issue of the said intended marriage in the wife's fund under the trusts hereinbefore contained, and pay or apply the same in or towards the advancement, or otherwise for the benefit of such child or remoter issue in such manner as the trustees or trustee shall think fit.

ultimate trusts for wife, in default of issue.

8. If there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [with such consent as aforesaid], then, subject and without prejudice to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the wife's fund and the income thereof, or so much thereof as shall not have become vested or been applied under any of such trusts or powers, upon the trusts following, that is to say: In trust for such person or persons, and for such purposes as the

wife shall, during coverture by will or codicil, or when not under coverture by any deed or deeds with or without power of revocation and new appointment, or by will or codicil appoint; AND in default of such appointment, and so far as no such appointment shall extend, upon the trusts following, that is to say, if the wife shall survive the husband, then in trust for the wife absolutely, but so that she shall not during coverture have power to anticipate such reversionary absolute interest; but if the husband shall survive the wife, then in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the effects of intestates had she died possessed thereof intestate and without ever having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

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9. The wife hereby covenants with the said [*trustees*] that if the said intended marriage shall be solemnized, and if the wife shall then be, or if she or the husband in her right shall, at any time during the now intended coverture, become seised, possessed of, or entitled to, or acquire an absolute power of disposition over any real or personal property (other than the property hereby settled), either in possession, reversion, contingency, or expectancy (*kk*), except property of a less value than £—— vesting in possession before or during the said intended coverture, from any one source, at any one time, and except any estate or interest to which she shall be or become entitled for her life only, or for a less period, and except jewels, trinkets, ornaments, plate, pictures, prints, books, furniture, and other moveable chattels, and except any property given by the husband to the wife (*kkk*) (which excepted premises it is hereby agreed and declared shall belong to her absolutely, and, as to any such life estates or interests as aforesaid,

Covenant to settle after-acquired property (*k*).

(*k*) As to the duties of trustees under such covenants, see *Ex parte Geaves*, 8 De G. M. & G. at p. 309. The Inland Revenue authorities claim *ad valorem* duty on property belonging to the wife at the time of the settlement, so the covenant should be restricted to property belonging to her at the time of the marriage, or afterwards accruing, as it is not then a settlement of a certain and definite sum. As to property of the wife coming to the husband after her death, see *Fisher* v. *Shirley*, 43 Ch. D. 290; *Re Coghlan*, [1894] 3 Ch. 76. A mere *spes successionis* is not caught by the covenant: *Re Simpson*, [1904] 1 Ch. 1; *Re Mudge*, [1914] 1 Ch. 115.

(*kk*) See *Re Bland*, [1905] 1 Ch. 4.

(*kkk*) See *Leigh White* v. *Ruttledge*, [1914] 1 I. R. 135.

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without power of anticipation), and except any property as to which the donor, settlor, or testator, from whom the same shall be acquired, shall indicate an intention that the same shall not fall under the operation of such an agreement or stipulation as this present agreement, then, and so often as the same shall happen, the wife and all other necessary parties, shall, at the cost of the trust estate, from time to time as soon as circumstances will admit, effectually settle and assure such other present or after-acquired property, save as aforesaid, or cause the same to be effectually vested in the said trustees or trustee, upon trust with all convenient speed and in such manner as the trustees or trustee shall think fit to sell or convert the same into money, and to stand possessed of the proceeds of such sale or conversion upon the same trusts, and with and subject to the same powers and provisions, as are herein declared of the wife's fund: PROVIDED ALWAYS, that it shall not be obligatory on the said trustees or trustee to convert into money any other present or after-acquired property of the wife which is of a reversionary nature whilst the same shall continue reversionary.

Declaration of trusts of after-acquired property.

Proviso as to reversionary property.

Power for intended wife to withdraw funds from settlement in proportion to the number of the children of the intended marriage and to appoint to a future husband, and in favour of her issue by him (*l*).

10. IT IS HEREBY AGREED AND DECLARED if the wife shall survive the husband, it shall be lawful for the wife, either in contemplation of or after any future marriage, by any deed or deeds, with or without power of revocation and new appointment, or by will, or codicil, to appoint in favour of any after-taken husband, and of her child, children, and issue by him, such part as is hereinafter mentioned, or any less part of the property hereby settled

(*l*) The following are alternative forms of clauses empowering the intended wife, if she should survive her husband, to make provision out of the trust funds in favour of a future husband and the issue of a future marriage:—

Power for wife to withdraw a definite sum from the settlement on a second marriage.

(1) "PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband and marry again, it shall be lawful for her by deed either in contemplation of or after such remarriage to withdraw from the settlement hereby made out of the property hereby settled or covenanted to be settled, other than the husband's fund hereinafter mentioned, a sum of not exceeding £——; PROVIDED nevertheless that no such withdrawal shall be made if there shall be more than four children of the said now intended marriage, who being sons shall attain the age of twenty-one years or die under that age leaving issue, or being daughters shall attain that age or marry under that age; PROVIDED also that

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and agreed to be settled by the wife, that is to say: if there shall not be more than one child of the now intended marriage, who being a son shall attain the age of twenty-one years or die under that age leaving issue, or being a daughter shall attain that age or marry, then two equal third parts or shares of such property; and if there shall be more than one such child, but not more than three such children, then one equal half part or share of such property; and if there shall be more than three, but not more than five such children, then one equal third part or share of such property, but no such future husband shall by virtue of any such appointment take any greater interest in such property than for his life, and the trusts, powers, and provisions in favour of the child, children, or issue of the wife by any such future husband, shall be similar to those herein declared in favour of the child, children, and issue of the now intended marriage, failing which the portion of the trust property to be appointed under this power shall remain subject to the trusts of this settlement, and so that the interest or share of property to be appointed under this power shall not be withdrawn from the trusteeship of these presents,

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this power of withdrawal shall not be exercisable to the prejudice of any previous appointment in favour of a child or issue of the said now intended marriage."

Power for wife to include children of a second marriage in appointment under powers to children of intended marriage.

(2) "PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband and shall marry again while there shall be living any child or children of her said now intended marriage, then and in such case the children or child of such second marriage of the wife shall become and be objects or an object of the power of appointment hereinbefore contained which will then be vested in the wife as the survivor of the husband and herself, and of all and singular other the trusts, powers, and provisions hereinbefore contained in favour of the child or children of the said now intended marriage in like manner to all intents and purposes as if the said child or children of such second marriage had been a child or children of the said now intended marriage, but so nevertheless as not to prejudice or affect any exercise by the husband and wife of their joint power of appointment hereinbefore contained in favour of any issue of the said now intended marriage, nor any exercise by the wife alone previously to her second marriage of the aforesaid power vested in her as such survivor as aforesaid."

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until absolutely and indefeasibly vested in some person in possession; PROVIDED ALWAYS, that any such appointment or appointments as last aforesaid may be made by the wife under the aforesaid power enabling her in that behalf, while it shall be uncertain whether or to what extent the same shall be capable of taking effect, and if so made shall take effect according to the event.

Assignment of policy to trustees.

11. The husband, with the approbation of the wife, hereby as settlor assigns unto the said [*trustees*] ALL THAT the said policy of assurance for the sum of £—— hereinbefore more particularly described, and all moneys assured by or to become payable thereunder, TO HOLD the same in trust for the husband, his executors, administrators, and assigns, until the said marriage, and after the said marriage shall have been solemnized, upon trust that the trustees or trustee shall invest the said policy moneys as and when the same shall be received in or upon any stocks, funds, or securities hereby authorised; and shall hold the said policy and policy moneys, and the investments for the time being representing the same (hereinafter called "the husband's fund"), and the income thereof respectively, upon the trusts and with and subject to the powers and provisions herein declared and contained concerning the wife's fund (other than and except any trust or power enabling the wife to make provision for any future husband or the issue of any future marriage), or as near thereto as the deaths of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, subject to the trusts, powers, and provisions herein declared and contained, or by law vested in the trustees or trustee in relation to the same premises, the trustees or trustee shall stand possessed of the said policy moneys, or so much thereof as shall not have been applied under any such trusts, powers, or provisions, and the investments and income thereof, in trust for the husband, his executors, administrators, and assigns.

Covenants by husband to keep up policy, &c.

12. The husband hereby covenants with the said [*trustees*] that if the said intended marriage shall be solemnized, he the husband will not do or suffer any act or thing whereby the said policy [policies or any of them] (*m*) or any other policy to be effected as hereinafter mentioned may become void or voidable: AND that if

(*m*) The variations in brackets throughout this clause are to be used where several policies are brought into settlement.

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any such policy shall become voidable, the husband will immediately, at his own cost, do all things necessary for restoring and keeping on foot the same, and if any such policy shall become void, will immediately, at his own cost, effect a new or substituted policy or policies on his life in the names or name of the trustees or trustee, in an office to be approved of by them or him, for the full amount assured by the policy so becoming void; And, further, that he the husband will regularly and punctually pay the annual premiums and all other sums of money, if any, which may become payable for keeping on foot the said original policy [policies respectively] and any new or substituted policy or policies, and will from time to time deliver to the trustees or trustee the receipt for every such payment within —— days after the same shall have become payable: And in case he shall at any time refuse, neglect or omit to pay, produce, restore, or effect any such premium, receipt, or policy within the times or manner respectively aforesaid, it shall be lawful for, but not obligatory upon the trustees or trustee to pay the premium, or to restore the policy to which any such default, refusal, neglect, or omission shall relate, or to effect any such new or substituted policy or policies as aforesaid in lieu thereof; And, further, that the husband, his heirs, executors, or administrators, will on demand repay to the trustees or trustee all moneys which they or he shall disburse for any of the purposes aforesaid, with interest thereon at the rate of —— per cent. per annum, until payment thereof; And will do and concur in all acts to enable them and him to effect any such new or other policy as aforesaid; And that every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder, shall be held and applied upon the trusts and with and subject to the powers and provisions hereby declared and expressed concerning the said original policy and the moneys to become payable thereunder.

Proviso that bonuses may be applied in reduction of premiums, or added to policy.

13. Provided always, that any moneys which may be from time to time received by the trustees or trustee by way of bonus in respect of the [any] policy hereby assigned, or any such substituted policy or policies as aforesaid, may (so far as the rules and regulations of the assurance office for the time being in force may permit) at the option of the husband be applied wholly or in part in reduction of the premiums upon such policy, and in default of or subject to such option, any such moneys shall be

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added to the said policy [policies] hereby assigned, and be held upon, with, and subject to the same trusts, powers, and provisions as are herein declared and contained of the moneys assured by the same policy [policies], and the investments for the time being representing the same.

Power for trustees to sell or surrender policy, and accumulate proceeds (*n*).

14. PROVIDED ALSO, that the trustees or trustee may, with the consent in writing of the wife during her life, and after her death at the absolute discretion of the trustees or trustee, if they or he shall consider it expedient so to do, sell or dispose of the policy [all or any of the policies] hereby assigned, or any such substituted policy or policies as aforesaid, either by way of surrender to the society or societies by whom the same may have been granted respectively or otherwise; AND in the event of and after any such sale or disposition the trustees or trustee shall hold the net proceeds of such sale or disposition upon trust during the then residue of the life of the husband, to accumulate the income of the same, from time to time, by way of compound interest by investing the same income and the resulting income thereof upon any of the stocks, funds, or securities hereby authorised for investment; AND from and after the death of the husband shall hold such accumulated fund and the income thereof upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the husband's fund and the income thereof.

Proviso for indemnity of trustees.

15. PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees or trustee shall not be chargeable or responsible for any omission or neglect to enforce any of the covenants hereinbefore contained in relation to the policy [respective policies] hereby assigned, or any such substituted policy or policies as afore-

(*n*) The husband being the settlor, the trust for accumulation will not operate beyond the life of the settlor, and therefore is not within the mischief of Thellusson's Act.

The following is an alternative form; after the power to sell or surrender the policy continue as follows:—

"AND in the event of and after any such sale or disposition the trustees or trustee shall, although the husband shall then be living, hold the net proceeds of such sale or disposition upon the trusts and with and subject to the powers and provisions hereinbefore declared concerning the moneys assured by the said policy [policies] hereby assigned, and the investments for the time being representing the same, to take effect after the death of the husband, and as if he were then actually dead."

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said, or to see that the same respectively are kept in force or restored, or for or by reason of any policy or policies lapsing or becoming void by any means whatsoever.

Investment clauses:

16. The trustees or trustee (*nn*) are hereby authorised [with such consent or at such discretion as aforesaid] to invest any moneys for the time being subject to the trusts hereof and requiring or being applicable for investment hereunder in the names or under the legal control of the trustees or trustee [In or upon any stocks, funds, or securities which may be for the time being authorised by law (*o*) for the investment of trust funds or of cash under the control or subject to the order of the Court [except real securities in Ireland]; but not in any stocks, funds, bonds, shares, or bearer securities, or securities transferable by mere delivery or delivery and indorsement though coming within the general description of investments hereinbefore authorised].

A. (Restricted range.)

[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom, or India, or of any Colony (including in that expression any British Colony or Dependency, or any province or state with a separate legislature forming part of such Colony or Dependency), or of any foreign government or state, or stock of the Bank of England or the Bank of Ireland, or Metropolitan stock, or London County stock, or debenture stock or guaranteed stock of any county, municipal, or other local or public authority or body in the United Kingdom, or India, or any Colony or any foreign country, or debenture stock or preference stock, or preference shares, or ordinary stock or shares (*oo*) of any railway company or other company in the United Kingdom or India, or in any Colony, or of any foreign country, in actual work and paying a dividend on its ordinary stock or shares, or upon the debentures, debenture stock, or preference stock or shares of any company in the United Kingdom incorporated by special Act, or by or under any public general Act or Acts of Parliament (*p*); or upon freehold, copyhold,

B. (Comprehensive range.)

(*nn*) In the case of a will, substitute the words "my trustees" for "the trustees or trustee" throughout the investment clauses.

(*o*) See sects. 1—7 of the Trustee Act, 1893; Colonial Stock Act, 1900, s. 2; and Metropolis Water Act, 1902, s. 17 (4); and R. S. C., Ord. 22, r. 17.

(*oo*) See *Re Willis*, [1911] 2 Ch. 563.

(*p*) This will include private companies. As to the meaning of "incorporated by Act of Parliament," see *Re Smith*, [1896] 2 Ch. 590;

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leasehold, or chattel real securities in the United Kingdom (*pp*) [including first charges registered under the Land Transfer Acts, 1875 and 1897], such leaseholds or chattels real having not less than —— years to run at the time of investment therein, or upon any securities of, or guaranteed by any government, or upon the security of any real or immoveable property either together with or without any movable property, in India, or any Colony, or any foreign country, or upon the debentures, mortgages or securities of any county, municipal, local public authority or body, or of any railway or other company in the United Kingdom or India, or any Colony, or any foreign country, or on the securities of rates or tolls made or levied by any such authority or body as aforesaid.]

C. (Fair range.)

[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom, or India, or of any Colony (including in that expression any British Colony or Dependency, or any province or state with a separate legislature forming part of such Colony or Dependency), or in stock of the Bank of England or Ireland, or Metropolitan stock, or London County stock, or in debenture stock of any county, municipal, or local authority in Great Britain, but not in Ireland, or in debenture stock, or preference stock, or preference shares of any railway or other company in the United Kingdom incorporated or established by charter or an Act of Parliament, in actual work and paying a dividend upon its ordinary stock or shares, or the stock or shares of any railway company in the United Kingdom or India on which a fixed or minimum rate of dividend is guaranteed by the same or any other company, or by the government of India, or any Colony, or guaranteed by means of a fixed rental payable by any other company; or upon freehold, copyhold, leasehold, or chattel real securities in England or Wales, but not in Ireland, or in or upon any bonds or securities which, or the interest upon which, are or is guaranteed by parliament, or upon the debentures or mortgages of any railway or other company in the United Kingdom incorporated by charter or Act of Parliament, and paying a dividend as aforesaid, or upon

Elve v. *Boyton*, [1891] 1 Ch. 501; and of "public company," see *Re Sharp*, 45 Ch. D. 286. As to private companies (Companies (Consolidation) Act, 1908, s. 121, amended by the Companies Act, 1913), see *Park* v. *Royalties, &c.*, [1912] 1 K. B. 330. As to the meaning of "any company in the United Kingdom," see *Re Hilton*, [1909] 2 Ch. 548.

(*pp*) *Or*, "in England and Wales, but not in Ireland."

the bonds, debentures, or securities of or issued by any such county, municipal, or local authority as aforesaid, or on the security of rates or tolls made or levied by any such authority.]

1. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom, or India, or in stock of the Bank of England or of the Bank of Ireland, or Metropolitan stock, or London County stock, or in or upon the debenture stock, or preference stock, or preference shares of any railway or other company in Great Britain or Ireland incorporated or established by charter or special Act of Parliament, and in actual work and which shall during the ten preceding years have paid a dividend of not less than 2 per cent. per annum on its ordinary stock or shares; or at interest upon any government securities of the United Kingdom or India, or upon freehold, copyhold, or long leasehold security (*q*) in England or Wales, but not in Ireland, but so that every such long leasehold security shall be on property wherein a term of not less than —— years shall be unexpired at the date of such security, or in or upon the bonds, debentures, or mortgages of any such railway or other company as aforesaid, [or in the purchase of, or at interest upon any stocks, funds, or securities which may for the time being be authorised for the investment of trust funds or of cash under the control of the Chancery Division], but not in any other mode of investment.]

D. (Another form with restricted range.)

[In or upon any stocks, funds, shares, or securities, or other investments of any nature whatsoever and whether involving liability or not, or upon personal credit with or without security, and generally in such manner as the trustees or trustee shall in their or his absolute discretion think proper, To the intent that they or he shall have as full power of investing and varying investments as if they or he were absolutely entitled.]

E. (Extensive range, short form.)

Power to vary investments (*r*).

17. The trustees or trustee may [with such consent or at such discretion as aforesaid] vary or transpose any investments made hereunder into or for others of any nature hereby authorised.

Power to lend on second mortgages and contributory mortgages.

18. Any investment on mortgage may be made subject to any prior charges or incumbrances affecting the property mortgaged, or to any stipulation for the continuance of the loan for a term

(*q*) Trustees having power to invest in "real securities" may now under certain limitations invest in long leasehold securities having not less than 200 years unexpired: see Trustee Act, 1893, s. 5.

(*r*) Where the power to vary investments is given in the trusts for investment, this clause may be omitted.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

certain, or may be made jointly with any other persons or person by way of contributory mortgage (*s*) to be taken either in the joint names of the contributories, or in the names or name of any other persons or person in trust for the contributories, or otherwise, as the trustees or trustee shall think expedient.

Power to pay calls on shares.

19. The trustees or trustee may apply any part of the capital of the trust premises in or towards payment of the calls on any shares for the time being forming part of the same.

Power to deposit deeds and securities for safe custody;

20. The trustees or trustee may deposit any deeds, securities, or other documents, including securities to bearer, from time to time held by them or him as such trustees or trustee with any banker, or banking firm or company, or other company whose business it is to take charge of such documents, for safe custody or receipt of dividends, without being responsible for any loss occasioned by or by reason of such deposit; and the trustees or trustee may pay out of the income of the trust premises any sum payable on account of such deposit, safe custody or receipt of dividends as aforesaid.

special indemnity;

21. In addition to the indemnity given by law to trustees the trustees or trustee shall not be answerable or accountable for lending on the security of any hereditaments of a less than marketable title (*ss*).

power for trustees to apportion blended trust funds and settle questions, &c.;

22. The trustees or trustee shall have full power to apportion, as they shall think fit, any funds subject to different trusts which may have become blended, and to determine all questions arising in the trust, and their or his decision, whether made upon a question actually raised, or implied in their or his acts, shall be conclusive and binding upon all persons interested hereunder.

power to appoint new trustees (*t*); and

to appoint additional trustee and/or a corporation or Public Trustee (*u*).

23. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in the husband and wife during their joint lives and the survivor of them during his or her life; [AND it is hereby agreed that the person or persons in whom for the time being such power is vested may from time to

(*s*) See *Webb* v. *Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328.

(*ss*) See Trustee Act, 1893, s. 8 (2) and (3), and s. 9.

(*t*) See the Trustee Act, 1893, s. 10.

(*u*) By sub-sect. (2) (a), the number of trustees may be increased, but only "on the appointment of a new trustee," which apparently means when a vacancy has occurred or a case has arisen for appointing a new trustee under the Act. As to appointing the Public Trustee as sole trustee, or jointly with others, or as custodian trustee, see Public Trustee

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

time increase the number of the trustees, notwithstanding that no case for the appointment of a new trustee has arisen, and may appoint any person or persons, or a corporation, or the Public Trustee to be a trustee or trustees jointly with the continuing trustees, or may appoint the Public Trustee as custodian trustee].

Power to trustees to employ agents and to charge for professional business.

24. It is hereby agreed that the trustees or trustee shall not be bound in any case to act personally, but shall be at full liberty to employ a solicitor or any other agent to transact all or any business of whatsoever nature required to be done in the execution of the trusts of these presents (including the receipt and payment of money), and shall be entitled to be allowed and paid all expenses and charges so incurred, and shall not be responsible for the default of any such solicitor or agent, or any loss occasioned by his employment; And any trustee of these presents being a solicitor or other person engaged in any profession or business may be so employed or act in or about the execution of the trusts of these presents, and being so employed or acting shall be entitled to and be paid all usual or proper professional or other charges for any business or act done by him or his firm in the premises, whether in the ordinary course of his profession or business or not, and although not of a nature requiring the employment of a solicitor or other professional person.

In witness, &c.

II. SETTLEMENT *on* Marriage, *of* Stocks, Shares, Bonds *and* Securities *belonging to the intended* Husband: Usual Trusts *for* Husband *for* Life, *for* Wife *surviving for her* Life, *and in favour of the* Issue *of the* Marriage. Ultimate Trust *for* Husband.

THIS INDENTURE (*x*), made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

Act, 1906, and see *ante*, Vol. I. p. 70. As to appointing a corporation as trustee jointly with an individual, see Bodies Corporate (Joint Tenancy) Act, 1899; *Re Thompson*, [1905] 1 Ch. 229.

(*x*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of the value of the shares, bonds, and securities at the date of the settlement: see Stamp Act, 1891, 1st sched. *sub tit.* Settlement; but the stamp should be adjudicated.

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

Recitals: of intended marriage;

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

of agreement to settle stocks, &c.

AND WHEREAS, pursuant to an agreement made upon the treaty for the said marriage, the several stocks, shares, bonds, and securities respectively mentioned in the schedule hereto which belong to the husband have been transferred into the names of and delivered to the said [*trustees*], to be held by them in trust for the husband until the said marriage, and thereafter upon the trusts and with and subject to the powers and provisions hereinafter declared and contained.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of such agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Declaration of trusts of shares and bonds, &c., specified in schedule:

1. The said [*trustees*], their executors, administrators, and assigns, shall after the intended marriage stand possessed of the said stocks, shares, bonds, and securities specified in the schedule hereto [which said stocks, shares, bonds, and securities are according to the average price of the same respectively on the day of the date hereof of the values set opposite thereto respectively in the same schedule, amounting in the whole to the cash value of £—— (*y*)], upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall either allow the said stocks, shares, bonds, and securities, or any of them, or any part thereof respectively to remain in their present state of investment respectively, or shall upon the request in writing [*or,* may with the consent] of the husband and wife during their joint lives, and of the survivor during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee, sell or dispose of the same trust premises, or any of them, or any part thereof respectively, and lay out and invest the moneys to arise therefrom in their or his names or name, or under their or his legal control, in or upon any of the stocks, funds, shares, and securities hereinafter authorised for the investment of trust moneys, and may from time to time, with such consent, or at such discretion as aforesaid, vary or transpose any of the said investments into or for others of any nature hereby authorised.

for husband till marriage; and afterwards to retain present investments or sell and invest proceeds.

(*y*) It may be convenient to state these particulars in the schedule.

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

2. The trustees or trustee shall pay the income of the said stocks, funds, shares, and securities hereby settled, and of the investments for the time being representing the same respectively (hereinafter called "the settled fund"), unto the husband and his assigns during his life, and from and after his death shall pay the income of the settled fund to the wife, if she shall survive him during her life, but so that during the coverture she shall not have power to anticipate such reversionary life interest.

Trusts of income for husband for life, and for wife if surviving for life.

3. From and after the death of the survivor of them, the husband and wife, the said trustees or trustee shall stand possessed of the settled fund and the income thereof, in trust for all or any of the children or remoter issue of the said intended marriage in such shares, and generally in such manner as the husband and wife shall by any deed or deeds, revocable or irrevocable, jointly appoint: AND in default of and subject to any such appointment then as the survivor of them the husband and wife shall in like manner or by will or codicil appoint; AND in default of and subject to any appointment under the respective powers hereinbefore contained: In trust for all the children or any the child of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry [with the consent of her parents or parent or guardians or guardian], and if more than one in equal shares.

Remainder for issue as husband and wife shall appoint (*short form*) (*z*);

remainder as survivor shall appoint;

trusts in default of appointment, &c.

4. [*Hotchpot clause, see Precedent I., clause* 5, *p.* 347.]

5. [*Power of advancement,* ibid., *clause* 7, *p.* 348.]

6. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [with such consent as aforesaid], then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the settled fund and the income thereof, or so much thereof as shall not have become vested or been applied under any of such trusts or powers, In trust for the husband absolutely (*a*).

Ultimate trust for husband in default of issue.

(*z*) Or the full form, clause 4 of Precedent I., *ante,* p. 346, may be used.

(*a*) Sometimes a proviso to the following effect is here inserted:—

"PROVIDED nevertheless that, if there shall be no such child of the said intended marriage as aforesaid, and the wife shall survive

Proviso giving widow, in

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

Proviso that settlor may withdraw securities from settlement, substituting others (*b*).

7. If the husband shall at any time or times be desirous of withdrawing from the settlement hereby intended to be created, all or any of the said stocks, shares, bonds, and securities specified in the said schedule hereto, or the stocks, funds, shares, or securities by which the same shall under or by virtue of the trusts or powers of investments and varying investments hereinbefore contained respectively, or of this provision be represented, or any part or parts thereof respectively, he shall be at liberty so to do, substituting from time to time to the satisfaction of the trustees or trustee other stocks, funds, shares, or securities which in the estimation of the trustees or trustee shall be of equivalent value.

8. [*Investment clause, see Precedent I., clause* 16, *p.* 355.]

9. [*Power to invest on contributory mortgage*, ibid., *p.* 357.]

10. [*Power to pay calls on shares*, ibid., *p.* 358.]

11. [*Power to deposit deeds and securities for safe custody, p.* 358.]

12—14. [*Trustee clauses, clauses* 21 *to* 24, *pp.* 358 *and* 359.]

In witness, &c.

The Schedule hereinbefore referred to.

III. SETTLEMENT *on* Marriage *of a* Policy *of* Insurance *effected on the* Life *of the* Intended Husband *in his own* Name *for the* Benefit *of the* Intended Wife *and the* Issue *of the* Marriage.

Parties.

THIS INDENTURE (*c*), made the —— day of ——, Between [*intended husband*], of, &c. (hereinafter called "the

default of issue, only one moiety of income of the trust fund.

the husband, then the trustees or trustee shall, upon the failure or in default of such issue, set apart and appropriate one moiety of the said trust fund, and pay the income thereof to the wife during her life in manner aforesaid, and shall hold the other moiety of the said trust fund, and also the first mentioned moiety thereof, subject to such life interest therein of the wife as aforesaid in trust for the executors or administrators of the said husband as part of his personal estate."

(*b*) This proviso will not, of course, be inserted in the absence of special instructions.

(*c*) Stamp, 5*s.* per 100*l.* or part of 100*l.* on the sum assured by the policy: see *ante*, p. 343, note (*b*). The stamp must be adjudicated.

husband "), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS [*recite intended marriage*, ante, *p.* 360]. III. OF POLICY ON LIFE OF HUSBAND. Recitals:

AND WHEREAS the husband is absolutely entitled to a policy of assurance effected by him on his own life and in his own name for the sum of £——, with the —— Life Assurance Society, dated the —— day of ——, and numbered ——, and under the annual premium of £——, and upon the treaty for the said marriage it was agreed that the same policy should be assigned to the said [*trustees*] in manner hereinafter appearing upon the trusts and with and subject to the powers and provisions hereinafter contained of and concerning the same. of title to policy, and agreement for settlement thereof.

NOW THIS INDENTURE WITNESSETH, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:— *Testatum.*

1. The husband, with the approbation (hereby certified) of the wife, hereby as settlor assigns unto the said [*trustees*], ALL the said policy of assurance on the life of the husband in the said —— Life Assurance Society, to which he is so entitled as aforesaid, and the said sum of £—— thereby assured, and all moneys to be recovered or received under or by virtue of the said policy by way of bonus or otherwise, TO HOLD the same unto the said [*trustees*], upon trust for the husband until the solemnization of the said intended marriage and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same. Assignment of policy to trustees (*d*). *Habendum.* In trust for husband till marriage, and afterwards on trusts declared.

2. If the said intended marriage shall be solemnized, the said trustees and the survivor of them, or the executors or administrators of such survivor, or other trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, upon the death of the husband, receive all the moneys assured by or to become payable under or by virtue of the said policy; and shall with the consent in writing of the wife during her life, and, after her death, at the discretion of the trustees or trustee, invest the same in the name or names or under the legal control of the trustees or trustee, in or upon any of the stocks, funds, shares, and securities hereinafter authorised, and Declaration of trusts of policy moneys: trust for investment: and power to vary;

(*d*) Notice of this assignment should be given to the society.

III. OF POLICY ON LIFE OF HUSBAND.

may from time to time, with such consent, or at such discretion as aforesaid, transpose any investments into others of any nature hereby authorised.

trust for income for wife for life without power of anticipation;

3. The trustees or trustee shall pay the income of the said policy moneys, and of the investments for the time being representing the same (which moneys and investments are hereinafter called "the trust fund"), unto the wife during her life, but so that she shall not, during coverture, have power to anticipate such reversionary life interest.

trusts for issue.

4. From and after the death of the wife the trustees or trustee shall stand possessed of the trust fund and the income thereof in trust, &c. [*for issue of marriage as husband and wife shall jointly appoint; remainder as survivor shall appoint, and in default of appointment for children equally at twenty-one or marriage, Precedent I., clause* 4, *p.* 346; *or Precedent II., clause* 3, *p.* 361].

5. [*Hotchpot clause, Precedent I., clause* 5, *p.* 347.]

6. [*Maintenance and accumulation clause, Precedent I., clause* 6, *p.* 347, *but see* ibid. *note* (*i*).]

7. [*Advancement clause, Precedent I., clause* 7, *p.* 348.]

8. [*Ultimate trust in default for husband absolutely, Precedent II., clause* 6, *p.* 361.]

9. [*Covenant by husband to keep up policy, Precedent I., clause* 12, *p.* 352.]

10. [*Proviso as to bonus being used for reduction of premiums, Precedent I., clause* 13, *p.* 353.]

11. [*Power to trustees to sell or surrender policy and accumulate proceeds, Precedent I., clause* 14, *p.* 354.]

12. [*Proviso for indemnity of trustees, Precedent I., clause* 15, *p.* 354.]

13—17. [*Investment clauses, Precedent I., clauses* 16, 18, 19, 20, *and* 21, ante, *p.* 355 et seq.]

18. [*Appointment of new trustees, Precedent I., clause* 23, *p.* 358.]

19. [*Power to employ agents and solicitor-trustee clause, Precedent I., clause* 24, *p.* 359.]

IN WITNESS, &c.

IV. SETTLEMENT *on* MARRIAGE *of a* SUM *of* MONEY *secured by the* COVENANT *of the* LADY'S FATHER, *payable within a year after his* DEATH, *with* INTEREST *in the meantime.* TRUST *of* INCOME *for* WIFE *for her* LIFE. POWER *to the* WIFE *to* BEQUEATH *a* LIFE INTEREST *to any* HUSBAND. TRUSTS *after* DEATH *of* WIFE *in favour of her* CHILDREN *by any* MARRIAGE *as she shall* APPOINT; *and in default of* APPOINTMENT *for such* CHILDREN *in* EQUAL SHARES. IV. OF SUM SECURED BY COVENANT.

THIS INDENTURE (*e*), made the —— day of ——, BETWEEN [*father*], of, &c., of the first part; [*intended wife*], spinster, daughter of the said [*father*] (hereinafter called "the wife"), of the second part; [*intended husband*], of, &c. (hereinafter called "the husband"), of the third part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals: of intended marriage;

AND WHEREAS in contemplation of such marriage the said [*father*] has agreed to settle, within twelve months after his decease, the sum of £—— upon his said daughter. of agreement to settle.

NOW THIS INDENTURE WITNESSETH that, in consideration of the said intended marriage, and of the premises, it is hereby agreed and declared as follows:— *Testatum.*

1. The said [*father*] hereby covenants with the said [*trustees*], that, if the said marriage be solemnized, the executors or administrators of the said [*father*] shall, within twelve calendar months after his decease, pay unto the said [*trustees*], or the [survivors or] survivor of them, or the executors or administrators of such survivor, or their or his assigns, or other the trustees or trustee for the time being under these presents (hereinafter called "the trustees or trustee"), the sum of £——; AND that the said [*father*], his executors or administrators, will, on every —— day of —— and —— day of —— after such marriage, until the said principal sum shall be paid, pay to the trustees or trustee interest after the rate of 4 per cent. per annum, from the day of such marriage, on the said principal sum of £——, and a pro- Covenant by father to pay money, *post obit;* and interest in the meantime.

(*e*) Stamp, 5*s.* per 100*l.* or part of 100*l.* on the sum secured by the covenant.

IV. OF SUM SECURED BY COVENANT.

portional part of such interest from the last of such days to the day of payment of the said principal sum.

2. PROVIDED ALWAYS, that the said [*father*] shall be at liberty to pay the said sum of £——, or any part thereof, to the trustees or trustee at any time or times in his lifetime.

Investment.

Power to vary investments.

3. The trustees or trustee shall upon receipt of the said principal sum, or any part thereof, with the consent in writing of the wife, or, after her decease, at their or his discretion, invest the same in their or his names or name, in or upon any of the stocks, shares, funds, or securities hereby authorised, and may from time to time with such consent or at such discretion as aforesaid transpose any of such investments into others of any nature hereby authorised.

Income to wife without power of anticipation.

Power to bequeath life interest to husband;

to appoint capital to children.

4. The trustees or trustee shall pay the interest to be received by virtue of the foregoing covenant, and other the income from the said trust premises, to the wife during her life, but without power of anticipation during any coverture; AND, after her decease, shall, if she should by will so direct, pay all or any part of the income from the trust premises unto any her surviving husband, during his life, or for any shorter period; AND, subject thereto, shall transfer the said trust premises unto such child or children or other issue of the wife, whether by her now intended or any future husband, and in such proportions and manner as she shall by deed or will appoint; AND, subject thereto, shall transfer the said trust premises unto such child or children of the wife as shall attain the age of twenty-one, or marry under that age, if more than one, in equal shares; AND, if there be no such child, shall hold the unappointed and unapplied trust premises in trust for the said [*father*], his executors, administrators, and assigns.

Trusts in default of appointment.

5. [*Hotchpot clause, Precedent I., clause* 5, *p.* 347.]

6. [*Advancement clause, Precedent I., clause* 7, *p.* 348.]

7. [*Investment clauses, Precedent I., clause* 16, *pp.* 355 et seq.]

8. [*Appointment of new trustees, Precedent I., clause* 23, *p.* 358.]

9. [*Solicitor-trustee clause, Precedent I., clause* 24, *p.* 359.]

IN WITNESS, &c.

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

V. SETTLEMENT *on* MARRIAGE *of a* GROSS SUM COVENANTED *by the* HUSBAND *to be* PAID *by him on the* MARRIAGE, *and of a* REVERSIONARY INTEREST *of the* WIFE *derived under the* MARRIAGE SETTLEMENT *of her* PARENTS, *and on* APPOINTMENT. PROVISO *that the* SUM *secured by* HUSBAND'S COVENANT *shall not be* CALLED *in during his* LIFETIME. COVENANTS *by* WIFE'S FATHER *to* PAY *an* ANNUITY, *during* JOINT LIVES *of* HIMSELF *and his* WIFE, *and to make up* WIFE'S REVERSIONARY INTEREST *to a certain* AMOUNT. POWER *to* INVEST TRUST MONEYS *in* PURCHASE *of* LAND; POWER *to* APPORTION *blended* FUNDS; POWER *for* SURVIVING HUSBAND *or* WIFE *to withdraw* TRUST FUNDS *from* SETTLEMENT *on a* FUTURE MARRIAGE; POWER *for* HUSBAND *and* WIFE *respectively to* APPOINT *his and her own* TRUSTEES.

THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*wife's father*], of, &c., of the third part; and [*trustee No.* 1], of, &c., [*trustee No.* 2], of, &c., [*trustee No.* 3], of, &c., and [*trustee No.* 4], of, &c., of the fourth part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals: of intended marriage;

AND WHEREAS upon the treaty for the said marriage it was agreed that the husband should enter into the covenant on his part hereinafter contained for payment to the said [*trustees*] of the sum of £——, in manner hereinafter appearing, to be settled upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same. of agreement that husband shall covenant for payment of sum;

AND WHEREAS under an indenture dated, &c., and made between [*parties*] (being the settlement made on the marriage of the said of wife's title to reversionary interest;

(*f*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of the amount of the sum covenanted to be paid by the husband, and of the value of the wife's reversionary interest (see *Onslow* v. *I. R. Commrs.*, [1891] 1 Q. B. 239); also 2*s*. 6*d*. for every 5*l*. and for any fractional part of 5*l*. of the annuity (see Stamp Act, 1891, sched. *tit.* Bond, &c.), 10*s*. in respect of the covenant to make up the value of the reversionary interest, and 10*s*. in respect of the covenant to settle the wife's after-acquired property, if inserted. The stamps should be adjudicated.

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

and of agreement to settle the same:

[*wife's father*] and [*wife's mother*]), and a deed poll dated, &c., under the hands and seals of the said [*wife's father*] and [*wife's mother*], the wife is entitled to one equal ——th part or share of or in the trust funds and property subject to the trusts of the said settlement, subject to the prior life interests of the said [*wife's father*] and [*wife's mother*] in the said trust funds and property under the same settlement; AND upon the treaty for the said marriage it was agreed that the said part or share of the wife, and all other her share or interest under or by virtue of the said settlement and appointment, or either of them, should be assigned to the said [*trustees*] to be held, as and when the same shall fall into possession, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

of agreement that wife's father should enter into covenants for payment of annuity, &c.;

AND WHEREAS upon the treaty for the said intended marriage it was further agreed that the said [*wife's father*] should enter into the covenant on his part hereinafter contained for payment to the said [*trustees*] of the annual sum hereinafter mentioned, to be received and applied upon the trusts and in manner hereinafter appearing, and also into the covenant hereinafter contained for making up the said reversionary share or interest of the wife to the sum of £——.

of agreement to settle wife's after-acquired property.

AND WHEREAS, &c. [*agreement for settlement of wife's after-acquired property*, ante, *p.* 344].

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Covenant by husband for payment of gross sum with interest.

1. The husband, with the approbation of the wife, hereby covenants with the said [*trustees*] that if the said intended marriage shall take place, he the husband, his executors or administrators, will, within —— calendar months thereafter, pay to the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), the sum of £——, with interest for the same at the rate of —— per cent. per annum from the day of such marriage; AND ALSO, if the said sum of £——, or any part thereof, shall not be paid within such —— calendar months, will pay to the trustees or trustee interest for the same, or so much thereof as shall for the time being remain unpaid, at the rate aforesaid

by equal half-yearly payments, the first of such payments to be made at the end of six calendar months from the day of the said marriage.

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

Proviso that trustees may forbear to compel payment of sum.

Provided always, that during the life of the husband the trustees or trustee shall not compel or require performance of the said covenant for payment of the said sum of £——, but it shall be optional for the husband to pay the same sum or any part thereof at such time or times as he shall in his discretion think fit; and that after the death of the husband it shall be lawful for the trustees or trustee in their absolute discretion either to call in and require payment of the said sum of £——, or of so much thereof as shall for the time being remain unpaid, or to leave the same on the security of the covenant for payment thereof hereinbefore contained, or on such other security as may be arranged between the trustees or trustee and the executors or administrators of the husband, for so long as the trustees or trustee shall think proper; And the trustees or trustee shall not be responsible for any loss occasioned by their omission to call in or compel or require payment of the said sum of £——, or any part thereof, either during the life of the husband or after his death.

Agreement that sum covenanted to be paid by husband shall be held on trusts to be declared.

2. The trustees or trustee shall stand possessed of the said sum of £——, hereinbefore covenanted to be paid to them (hereinafter called "the husband's fund"), and every part thereof, as and when the same shall be received by them or him, and the income thereof: Upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Assignment by wife of her reversionary interest (*ff*).

3. The wife, with the approbation of the husband, hereby as settlor assigns unto the said [*trustees*]: All that the said equal part or share to which the wife is, and all other, if any, the share or interest to which she may in any event become entitled, under or by virtue of the said indenture of settlement and deed of appointment, or either of them, of or in the trust funds and property comprised in, or which now or at any future time may become subject to the trusts of the said indenture of settlement, expectant on the decease of the said [*wife's father*] and [*wife's mother*], and subject to their respective life interests therein as

(*ff*) Notice of this assignment should be given to the trustees of the original settlement.

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

hereinbefore mentioned: To HOLD the premises hereby assigned (hereinafter called "the wife's fund") unto the said [*trustees*], their executors, administrators, and assigns: In trust for the wife until the said intended marriage shall take place, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Habendum.

On trusts hereinafter declared.

Declaration of trusts, &c. of both funds:

for investment, with power to vary;

4. The trustees or trustee shall, from and after the said intended marriage, stand possessed of the husband's fund and wife's fund respectively, as and when the same, or any part thereof respectively, shall be paid to them or him, or have fallen into possession, and either permit the same to remain in their actual state of investment, or shall, with the consent in writing of the husband and wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the said trust funds respectively, or such part or parts thereof respectively as shall from time to time be received by them or him in their or his names in or upon any of the stocks, shares, funds, and securities hereby authorised, and may from time to time, with such consent or at such discretion as aforesaid, transpose any of such investments into others of any nature hereinafter authorised.

as to income of husband's trust fund, during joint lives of himself and wife, to him, remainder to survivor for life;

as to income of wife's trust fund, during joint lives, to her, remainder to survivor for life;

5. During the joint lives of the husband and wife the trustees or trustee shall pay the income arising from the husband's fund, or of so much as shall for the time being have been received by the trustees or trustee, and the investments representing the same, unto the husband and his assigns; and from and after the death of either of them, the husband and wife, unto the survivor of them during his or her life; AND shall, during the joint lives of the husband and wife, pay the income arising from the wife's fund, when and so soon as the same shall have fallen into possession, unto the wife; and after the death of either of them, the wife and husband, unto the survivor of them, and his or her assigns, during his or her life.

after death of survivor both trust funds for issue of marriage.

6. From and after the death of the survivor of them, the husband and wife, the trustees or trustee shall stand possessed of both the husband's fund and wife's fund, if and so soon as the same respectively, or any part thereof respectively, shall have been paid or fallen into possession respectively, and the income of the same funds respectively, upon trust, &c. [*for issue as husband and wife shall jointly appoint, and in default of such appointment as survivor shall appoint, and in default of any appointment for*

children equally at twenty-one or marriage, ante, *Precedent I., clause* 4, *p.* 346].

7. [*Hotchpot clause,* ibid., *clause* 5, *p.* 347.]

8. [*Maintenance and accumulation clause* (*if required*), ibid., *clause* 6.]

9. [*Advancement clause,* ibid., *clause* 7, *p.* 348.]

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

Trusts of capital in default of issue.

10. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, they or he, the trustees or trustee, shall stand possessed of the husband's fund and wife's fund respectively if and so soon as the same shall have been paid or fallen into possession, and the investments representing the same, and the income thereof, or so much thereof as shall not have been paid or applied under any of such trusts or powers as to the husband's fund and the investments representing the same, and the income thereof, in trust for the husband absolutely; And as to the wife's fund, in trust for such person or persons, and for such purposes as the wife shall during coverture by will or codicil, or when not under coverture by any deed or deeds with or without power of revocation and new appointment, or by will or codicil appoint; And in default of such appointment, and so far as no such appointment shall extend, upon the trusts following, that is to say, if the wife shall survive the husband, then in trust for the wife absolutely; but if the husband shall survive the wife, then in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the effects of intestates had she died possessed thereof intestate and without ever having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes: Provided always, that the wife shall not have power during the said intended coverture to dispose of or charge any estate or interest whatever, whether in possession, reversion, remainder, or expectancy, hereby given to her in any trust property hereby settled or agreed to be settled by way of anticipation.

As to husband's trust fund, for him absolutely.

As to wife's trust fund, on usual trusts in her favour.

General proviso in restraint of anticipation.

11—16. [*Investment clauses,* ante, *Precedent I., clauses* 16 *to* 21, *p.* 355 et seq.]

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

Power to lay out trust moneys in purchase of land.

17. It shall be lawful for the trustees or trustee, with such consents or at such discretion as aforesaid, at any time or times to invest any trust moneys in the purchase of any freehold, copyhold, or customary or leasehold messuages, lands, tenements, or hereditaments in Great Britain, but not in Ireland (so that the leaseholds be held for an absolute term, of which not less than [*sixty*] years shall be then unexpired, or by lease containing a covenant to renew for such term at least), with power to purchase, subject to any special stipulations, and to complete or accept any contract or title, though not strictly enforceable or marketable, and to waive any objections or requisitions: And the same when so purchased shall be conveyed and assured unto and to the use of the trustees or trustee, their or his heirs, executors, administrators, and assigns respectively, according to the tenure thereof,

Trust for resale.

to be held by them or him upon trust, with such consents or at such discretion as aforesaid, to sell the same, and to hold the proceeds of such sale, after payment of the costs thereof, upon the same trusts, and with and subject to the same powers and provisions (including the power of purchasing hereditaments) as the money so invested under this present power would have been subject to had it not been so invested.

Power of management.

18. In the meantime, and until all the said purchased lands and premises shall have been sold, the trustees or trustee shall have power to receive the rents and profits thereof, and to manage, either personally or by salaried agents, bailiffs, or deputies, the

Power to lease.

same premises or the unsold parts thereof; And to demise the same lands and premises, or any part thereof, for any term not exceeding twenty-one years, to take effect in possession or within six calendar months of the date of the lease of the premises so demised, at the best rent that can be obtained without taking a premium, subject to a power of re-entry if the rent shall be in arrear for twenty-one days.

Trusts of rents of purchased lands until sale.

19. Until all the said purchased lands and premises shall have been sold, the rents and profits thereof shall (after payment thereout of costs and expenses of fire insurance, repairs, management, ground rents, and other outgoings) be paid and applied to the person or persons, upon the trusts, and in the manner, to whom, upon, and in which, the income arising from the proceeds of sale of such lands and premises would have been payable or applicable by virtue of the trusts hereinbefore contained if such sale had been made.

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

20. If any messuages, lands, or property to be purchased as aforesaid shall be held under any lease or leases, the trustees or trustee shall be entitled to be fully indemnified out of the trust premises for the time being subject to the trusts of these presents, and the rents and income thereof from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases; AND if and whenever the trustees or trustee become liable to pay increment value duty or reversion duty in respect of any hereditaments for the time being subject to the trusts hereof, the trustees or trustee may provide for the payment of the amount due or to become due in respect of such duty, and for the costs (including costs of valuation) in connection therewith, either by appropriating such sums of money as they or he shall think fit out of capital moneys forming part of the fund to which such hereditaments belong, or by raising such sums of money by mortgage of or charge upon the hereditaments in respect of which such duty is payable, or of or upon some other part of the same fund.

Proviso for indemnity of trustees in respect of leaseholds.

Proviso as to increment value and reversion duties.

21. The said [*wife's father*] hereby covenants with the said trustees that if the said intended marriage shall take place, he, the said [*wife's father*], his heirs, executors, or administrators, will pay to the trustees or trustee during the joint lives of the said [*wife's father*] and [*wife's mother*], and the life of the survivor, if and so long as the husband or the wife, or any issue of the marriage, shall be living, the yearly sum of £——, commencing from the day of the said marriage and payable by equal half-yearly payments on the —— day of ——, and —— day of —— in every year, but to be deemed as accruing from day to day.

Covenant by wife's father for payment of annuity.

22. The trustees or trustee shall stand possessed of the said yearly sum of £——, payable under the covenant of the said [*wife's father*] upon trust from time to time (*g*) to pay and apply the same to the person or persons for the purposes and in manner for and in which the income of the wife's fund would, if the same had fallen into possession under or by virtue of the trusts, powers, and provisions herein contained, be for the time being payable or applicable.

Trusts of annuity.

(*g*) Or, if so intended, insert here—
"pay the same to the husband during his life, and subject thereto pay and apply the same," &c., *as in the text.*

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

Covenant by wife's father to make up the wife's reversionary interest to a certain amount.

23. The said [*wife's father*] hereby further covenants with the trustees that, if the said intended marriage shall take place, and if at the death of the survivor of him, the said [*wife's father*] and [*wife's mother*], his wife, the part or share appointed to or in favour of the wife, or to which she may become entitled in default of appointment, of or in the said trust funds and property comprised in or subject to the trusts of the hereinbefore mentioned indenture of settlement, shall not be of the value in the whole of £——, then the executors or administrators of the said [*wife's father*] shall, within —— calendar months of the death of the survivor of the said [*wife's father*] and [*wife's mother*] pay to the trustees or trustee such a sum of money as shall, with the amount in value at the time of payment of the said part or share, make up the full sum of £—— with interest for the same from the death of such survivor at the rate of —— per cent. per annum.

Trusts of sum so to be paid.

24. The trustees or trustee shall hold and apply any principal sum and interest payable under the covenant lastly hereinbefore contained upon the like trusts and with and subject to the like powers and provisions as are herein declared and contained concerning the wife's fund, and the investments thereof, and the income thereof respectively.

25. [*Covenant for settlement of wife's after-acquired property, Precedent I., clause* 9, ante, *p.* 349.]

Power for trustees to raise out of the wife's trust fund a sum not exceeding £—— for her benefit.

26. Notwithstanding the proviso against anticipation by the wife of any interest hereby given to her, it shall be lawful for the trustees or trustee if they or he shall, in their or his discretion, think it proper or expedient in the interests of the wife so to do, at any time or times, upon the request in writing of the wife during her life or pursuant to her request contained in her will or any codicil thereto, and whether or not there may be issue living of the said intended marriage at the time of any such request to raise, by sale or conversion of any of the investments for the time being representing the wife's fund when and so soon as the same shall have fallen into possession, or previously thereto, by mortgage of, or charge upon the same fund, and of the said annuity and sum respectively covenanted to be paid by the said [*wife's father*], and hereby made subject to the trusts, powers and provisions of the same fund, or any of such trust premises or any part thereof respectively, at interest after such rate as may be arranged, or by such other ways and means as the trustees or

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

trustee shall think fit, any sum or sums of money not exceeding in the whole the sum of £——, and to pay the sum so raised to the wife for her absolute use and benefit, or apply the same for her benefit in such manner as the trustees or trustee shall think fit.

Power for trustees to apportion blended trust funds, and to make appropriations.

27. If all or any of the trust funds hereinbefore mentioned and intended to be hereby brought into settlement, or any parts thereof, shall become blended, it shall be lawful for the trustees or trustee to apportion and divide the same for the purposes of the trusts of these presents; AND ALSO upon any partial or upon the final distribution of the said trust funds or any of them, to appropriate any sums of money, stocks, funds, shares, or securities, or other property for the time being subject to the trusts of these presents as the trustees or trustee shall in their or his absolute and uncontrolled discretion think proper for that purpose to answer any shares or interests, or share or interest arising under or by virtue of these presents; and every such apportionment, division, or appropriation shall be effectual and binding upon all persons interested.

Power for surviving husband or wife to withdraw funds from settlement on a future marriage.

28. It shall be lawful for the survivor of them, the husband and wife, at any time or times after the death of the other of them, either in contemplation of or after any future marriage of such survivor, by any deed or deeds with or without power of revocation and new appointment, or by will or codicil to appoint in favour of any after-taken wife or husband, and the child or children of such future marriage, or any of them, such shares and interests of and in the respective trust funds and property hereby settled on the part of such survivor, including in the case of the wife such shares and interests of and in any property which may become subject to the trusts of these presents under or by virtue of the agreement for settlement of her other or after-acquired property hereinbefore contained, as follows, that is to say, &c. [*continue power to withdraw funds from settlement in proportion to number of children of the intended marriage, &c.*, ut ante, *Precedent I., clause* 10, *p.* 350, mutatis mutandis].

29—34. [*Investment clauses, Precedent I., clauses* 16 *to* 20, *p.* 355.]

35. [*Special indemnity, Precedent I., clause* 21, *p.* 358.]

Power to appoint new trustees where

36. The statutory power of appointing new trustees or a new trustee of these presents in the place of the said [*trustee No.* 1]

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

and [*trustee No.* 2], or either of them, or any future trustees or trustee to be appointed in succession to them, or either of them, shall be vested in and exerciseable by the husband during his life; and the statutory power of appointing new trustees or a new trustee in the place of [*trustee No.* 3] and [*trustee No.* 4], or either of them, or any future trustees or trustee to be appointed in succession to them, or either of them, shall be vested in and exerciseable by the wife during her life.

each party names his and her own trustee.

37. [*Power to employ agents, &c., Precedent I., clause* 24, *p.* 359.]

In witness, &c.

VI. SETTLEMENT *on* Marriage *of a* Share *of the* Residuary Estate *of a* Deceased Testator *belonging to the* Wife. Covenant *by the* Husband's Father *for* Payment *to the* Trustees Six Months *after the* Marriage *of a* Sum *of* Money *with* Interest *till* Payment. Power *for* Trustees *to* Forbear *requiring* Payment. Covenant *by* Wife's Father *to* Pay *an* Annuity *during his* Life. Power *for* Trustees *to* Invest Trust Moneys *in* Purchase *of a* Residence.

Parties.

THIS INDENTURE (*h*), made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*husband's father*], of, &c., of the third part; [*wife's father*], of, &c., of the fourth part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fifth part.

Recitals: of intended marriage;

Whereas a marriage is intended shortly to be solemnized between the husband and wife.

of title of wife to share of

And whereas the wife is now under the will of her uncle [*testator*], of, &c., dated, &c., and proved, &c., absolutely entitled

(*h*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the wife's share, and also of the amount of the gross sum covenanted to be paid by the husband's father. It would seem that the deed should also bear a stamp of 2*s.* 6*d.* per 5*l.* of the annuity covenanted to be paid by the wife's father (see *ante*, p. 367, note (*f*)), and 10*s.* in respect of the covenant to settle the wife's after-acquired property, if inserted; but the stamps should be adjudicated.

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &c.

in possession, as one of the children of her father the said [*wife's father*] by her mother [*wife's mother*], deceased, to one equal ——th part or share of the residuary personal estate of the said [*testator*], which so far as it has now been realised or ascertained consists of or is represented by the several sums of money, stocks, funds, shares and securities specified in the schedule hereto, now standing in the names of or otherwise vested in or under the legal control of [*executors*], the executors of the said will, and the wife may, in the event of the death of any of the other children of the said [*wife's father*] by the said [*wife's mother*], deceased, being sons or a son under the age of twenty-one years, or, being daughters or a daughter under that age and without having been married, become entitled to a further share or further shares in the said residuary personal estate.

residuary estate under a will;

And whereas, upon the treaty for the said intended marriage, it was agreed that all the share or shares to which the wife is now or may hereafter become entitled as aforesaid, of or in the said residuary personal estate of the said [*testator*], should be assigned to the said [*trustees*] in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared concerning the same.

of agreement to settle wife's share;

And whereas upon the treaty for the said intended marriage, it was agreed that the said [*husband's father*] should enter into the covenant on his part hereinafter contained for payment of the sum of £——, and of the interest thereon in manner hereinafter appearing; and it was further agreed that the said [*wife's father*] should enter into the covenant on his part hereinafter contained for payment of the annuity of £—— hereinafter mentioned.

of agreement by husband's father to enter into covenant for payment of gross sum; and of agreement by wife's father to pay annuity, &c.

And whereas [*recital of agreement to settle after-acquired property of wife*, ante, *p.* 344].

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

1. The wife, with the approbation of the husband (hereby testified), hereby as settlor assigns unto the said [*trustees*], All that one equal ——th part or share to which she is entitled under

Assignment by wife of share of residuary estate (*hh*).

(*hh*) Notice of this assignment should be given to the trustees of the will.

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the hereinbefore recited will of the said [*testator*] as aforesaid, and all other (if any) the part or share, parts or shares to which she is now or will in any event become entitled of or in the residuary personal estate of the said [*testator*], and the investments now or hereafter representing the same respectively, subject to all prior interests affecting the same respectively: To HOLD all the premises hereinbefore assigned unto the said [*trustees*], in trust for the wife until the solemnization of the said intended marriage, and thereafter, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Habendum.

Trusts of share or shares assigned by wife.

2. The said [*trustees*], their executors, administrators, and assigns, shall stand possessed of the said part or share, parts or shares, and premises hereinbefore expressed to be assigned, as and when the same shall be received by them respectively: Upon trust that the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), may either permit the same premises, or such parts thereof as shall be invested in any stocks, funds, shares, or securities hereby authorised for investment, to remain in their actual state of investment respectively, or as to such of the same premises as shall be so invested, may, with the consent of the husband and wife, or the survivor of them, during their, his or her lifetime, and after the death of such survivor, at the discretion of the trustees or trustee, and as to such parts thereof as shall not be so invested, shall sell and convert into money the same, and invest the proceeds of such sale and conversion in their or his names or name in or upon any stocks, shares, funds, or securities hereby authorised, and may from time to time with the like consent, or at the like discretion, transpose any of such investments into others of any nature hereby authorised.

Usual trusts for wife, husband, and issue of marriage.

3. The said trustees or trustee shall, during the joint lives of the said husband and wife, pay the income of the premises hereby assigned and the investments for the time being representing the same (hereinafter called "the wife's fund"), unto the wife without power of anticipation.

4. [*Trust of income for survivor of husband and wife for life*, ante, *Precedent I., clause* 3, *p.* 346.]

5. [*Remainder for issue as husband and wife appoint; remainder as survivor shall appoint, and in default of appoint-*

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ment for children equally at twenty-one or marriage, ante, *Precedent I., clause* 4, *p.* 346.]

6. [*Hotchpot clause*, ibid., *clause* 5, *p.* 347.]

7. [*Power of advancement*, ibid., *clause* 7, *p.* 348 (*i*).]

8. [*Ultimate trust for wife in default of issue*, ibid., *clause* 8, *p.* 348.]

9. [*Covenant to settle wife's after-acquired property*, ibid., *clause* 9, *p.* 349.]

Covenant by husband's father for payment of gross sum and interest.

10. The said [*husband's father*] hereby covenants with the said [*trustees*] in manner following, that is to say, that if the said intended marriage shall be solemnized, he the said [*husband's father*], his heirs, executors, or administrators will, within six calendar months thereafter, pay to the trustees or trustee the sum of £——, with interest thereon at the rate of 4 per cent. per annum from the day of the solemnization of the said intended marriage; AND ALSO as long after the expiration of such six months as aforesaid as the said sum of £——, or any part thereof, shall remain unpaid, will pay to the said trustees or trustee interest on the said sum, or so much thereof as shall for the time being remain unpaid, at the same rate, by equal half-yearly payments, whereof the first shall be made at the end of six calendar months next after the solemnization of the said intended marriage.

Proviso that trustees shall not compel payment of sum, unless required so to do.

11. PROVIDED ALWAYS, that the said trustees or trustee shall not require payment of the said sum of £——, or any part thereof, in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, except upon the request in writing of the husband and wife, or the survivor of them, and, after the death of such survivor, in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, without the concurrence of all the trustees of these presents for the time being if more than one, and that the said trustees or trustee shall not be responsible for any loss occasioned by their or his omission to require payment of the said sum of £—— in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, except when so required as aforesaid.

(*i*) If desired, insert provisions for maintenance and accumulations: see Precedent I., clause 6, p. 347, as to which see note (*i*), *ibid.*

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &C.

Declaration of trusts of sum covenanted to be paid by husband's father.

12. The trustees or trustee shall stand possessed of the said sum of £—— hereinbefore covenanted to be paid by the said [*husband's father*] as and when the said sum, or any part thereof, shall have been received, upon trust to invest the same in manner aforesaid, with the like power to vary such investments; and shall stand possessed of the same sum of £——, and the investments representing the same (hereinafter called "the husband's fund") and the income thereof respectively, upon trust to pay the income thereof unto the husband and his assigns during his life; AND from and after his death the trustees or trustee shall hold the husband's fund and the income thereof, upon the trusts, and with and subject to the powers and provisions herein declared and contained concerning the wife's fund, or as near thereto as the deaths of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then subject to the trusts, powers and provisions herein declared and contained concerning the same premises, or by law vested in the said trustees or trustee, the said trustees or trustee shall stand possessed of the husband's fund, or so much thereof as shall not have been applied under any such trusts, powers, or provisions, and the investments and income thereof, in trust for the husband absolutely.

Covenant by wife's father for payment of an annuity.

13. The said [*wife's father*], with the privity and approbation of the husband and wife hereby covenants with the said [*trustees*] that, if the said intended marriage shall be so solemnized, he the said [*wife's father*], or his executors or administrators, will, during the life of him, the said [*wife's father*], if and so long as the husband and wife, or the survivor of them, or any issue of the marriage shall be living, pay to the trustees or trustee the yearly sum of £—— by equal half-yearly payments, the first of such payments to be made at the end of six calendar months after the marriage.

Trusts of annuity.

14. The trustees or trustee shall from time to time, while the said yearly sum of £—— shall be payable, pay and apply the same to the person or persons, for the purposes, and in the manner, to whom, and for and in which the income of the wife's fund would for the time being be payable or applicable, under or by virtue of the trusts, powers, and provisions hereinbefore declared concerning the same.

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &c.

15. PROVIDED ALWAYS, that the said trustees or trustee shall not require payment of the said yearly sum of £——, or any part thereof, except upon the request in writing of the husband and wife, or the survivor of them, and after the death of such survivor of them without the concurrence of all the trustees for the time being of these presents, if more than one; AND that the trustees or trustee shall not, nor shall any of them be responsible for any loss occasioned by reason of their or his not having enforced the covenant lastly hereinbefore contained except when so required as aforesaid.

Proviso that trustees shall not compel payment of annuity, unless required so to do.

16. PROVIDED ALWAYS, that the trustees or trustee shall at any time, upon the request in writing of the husband and wife, or the survivor of them, raise by sale or conversion into money of a competent part of the husband's fund and of the wife's fund, or of either of such funds, any sum not exceeding £——, and lay out the sum so raised in the purchase of some freehold, copyhold, or leasehold messuage or dwelling-house, situate in England and Wales (but so that any leaseholds be held for an absolute term, of which not less than —— years shall be then unexpired), with suitable offices and outbuildings, and either with or without stables, gardens, or other pleasure grounds, and lands to be held and occupied therewith, and in payment of the expenses of and incidental to such purchase, and also (if the trustees or trustee shall in their or his discretion think fit) of the expenses of and incidental to putting into good repair and condition the said messuage so to be purchased, and of making the same and the gardens and pleasure grounds thereof (if any) fit for convenient habitation and occupation; and shall cause the same messuage and premises, when so purchased, to be conveyed and assured unto and to the use of the trustees or trustee and their or his heirs, executors, administrators, and assigns respectively, according to the nature or quality thereof respectively, to be held by them or him, upon trust upon the request in writing of the husband and wife, and the survivor of them, and, after the death of such survivor, at the discretion of the trustees or trustee, to sell the said messuage and premises so purchased, or any part thereof: AND the said trustees or trustee shall stand possessed of the net proceeds which

Power to invest trust moneys in purchase of a residence(*k*);

trust for resale;

trusts of proceeds of resale.

(*k*) For a general power to invest trust funds in purchase of land, see *ante*, p. 372, clauses 17—20.

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &C.

shall arise from any such sale as last aforesaid, subject to the payment thereout of the expenses incurred in or about such sale, or otherwise in or about the execution of any of the trusts aforesaid, upon the same trusts and with and subject to the same powers (including this present power) and provisions upon, with, and subject to which the money laid out in the purchase of the said messuage and premises, or the part thereof so sold, would then have been held if the same had not so been laid out.

Proviso as to occupation and letting residence purchased.

And until such sale the trustees or trustee shall permit the husband and wife, and the survivor of them, to have the personal use and occupation of the same messuage and premises as a residence so long as they, he, or she shall live and think fit to reside in the same messuage, they, he, or she keeping the said messuage and premises insured against fire to the full value thereof in their, his, or her name, or in the names of the trustees or trustee, and also keeping the same messuage in tenantable repair, and paying the taxes and other outgoings affecting the same; with power for the husband and wife, or the survivor of them, and, after the death of such survivor, for the trustees or trustee to demise the said messuage and premises, or any part thereof, for any term not exceeding twenty-one years, to take effect in possession or within six calendar months of the date of the lease at the best rent that can be obtained without taking a premium, subject to a power of re-entry if the rent should be in arrear for twenty-one days: And the rents and profits of the said messuage and premises, or of the unsold part thereof, shall be paid and applied in like manner as the income arising from the proceeds of the sale of the same premises would be payable or applicable if the same were sold.

17—22. [*Investment clauses, Precedent I., clauses* 16 *to* 21, ante, *pp.* 355 et seq.]

23. [*Power to apportion blended trust funds*, ibid., *clause* 22, *p.* 358.]

24. [*Power to appoint new trustees*, ibid., *clause* 23, *p.* 358.]

25. [*Power to employ agents, and to charge for services*, ibid., *clause* 24, *p.* 359.]

In witness, &c.

The Schedule hereinbefore mentioned.

VII. ASSIGNMENT ON MARRIAGE.

VII. ASSIGNMENT *on* MARRIAGE *of a* PORTION *belonging to the* INTENDED WIFE, *raisable out of* SETTLED LANDS, *of which her* ELDEST BROTHER *is* TENANT *for* LIFE, *to the* TRUSTEES, *to be held by them upon the* TRUSTS *of an* INDENTURE *of* SETTLEMENT *of even* DATE (*l*). (*See next* PRECEDENT.)

THIS INDENTURE (*m*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and the said [*intended wife*]. Recitals: of intended marriage;

AND WHEREAS under or by virtue of an indenture of settlement dated, &c., and made between [*parties*] (being a settlement of lands and hereditaments situate at ——, in the county of ——, of which [*brother*], the eldest brother of the said [*wife*], is now tenant for life in possession under the same settlement), and by virtue of the trusts of a term of —— years by the same indenture limited in the said lands and hereditaments for raising portions for the daughters and younger sons of the said [*wife's father*] and [*wife's mother*], both since deceased, and by virtue of an appointment in exercise of a power in that behalf contained in the said indenture of settlement made by the will of the said [*wife's father*], dated, &c., and proved, &c., the said [*wife*] is absolutely entitled to the sum of £——, raisable out of the said lands and hereditaments, and now payable to her, but which has not yet been raised and paid, with interest until payment at the rate of 4 per cent. per annum, and all interest on the said sum has been paid up to the —— day of —— now last past. of wife's title to portion;

AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said portion or sum of £—— should be assigned to the said [*trustees*] in manner hereinafter appearing upon the trusts hereinafter declared and contained concerning the same. of agreement for assignment of portion.

(*l*) Notice of this assignment should be given to the trustees of the original settlement. The object of making the assignment by a separate deed is to keep the settlement off the title to the lands charged in the portion.

(*m*) Stamp, 10*s*. The *ad valorem* stamp will be on the settlement of even date: see Stamp Act, 1891, s. 106. But the stamp should be adjudicated.

VII. ASSIGNMENT OF PORTION ON MARRIAGE.

Assignment of portion.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*wife*], with the approbation of the said [*husband*] (hereby testified), hereby as settlor assigns unto the said [*trustees*], ALL THAT the said portion or sum of £——, to which the said [*wife*] is entitled as aforesaid, raisable by virtue of the trusts of the said term of —— years limited by the said indenture of settlement, and by virtue of the said will of the said [*wife's father*] as hereinbefore recited, and all interest now or to become payable in respect of the same sum, TO HOLD the premises hereby assigned unto the said [*trustees*], their executors, administrators, and assigns, in trust for the said [*wife*] until the said intended marriage shall take place, AND thereafter upon such trusts, and with and subject to such powers and provisions as are declared and contained concerning the same by and in an indenture of even date herewith, and to be executed immediately after these presents, and to be made between the same parties as are parties to these presents: AND it is hereby declared that the statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and [*wife*] during their joint lives and in the survivor of them during his or her life.

Habendum.

In trust for wife till marriage and afterwards upon trusts, &c., declared by indenture of even date.

IN WITNESS, &c.

VIII. SETTLEMENT *on* MARRIAGE *of a* PORTION *belonging to the* INTENDED WIFE *which has been* ASSIGNED *to the* TRUSTEES *by an* INDENTURE *of even* DATE (*see last* PRECEDENT), *and of several* POLICIES *of* ASSURANCE *on the* LIFE *of the* HUSBAND *which have been effected by him in his own* NAME. FIRST LIFE INTEREST *in* WIFE'S FUND *to* WIFE, *with* POWER *for* TRUSTEES *to pay* INCOME *to the* HUSBAND *or to* WIFE'S BANKERS. SECOND LIFE INTEREST *to* HUSBAND *terminable on* ALIENATION, *&c.* TRUSTS *for* ISSUE (SPECIAL). PROVISIONS *for keeping up the* POLICIES. POWER *for* HUSBAND *to* REDEEM POLICIES.

Parties.

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the

(*n*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the portion and of the amount assured by the policies (see *ante*, p. 343, note (*b*)): also 10*s.* in respect of the covenant to settle after-acquired property.

husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. VIII. OF PORTION BELONGING TO WIFE.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals: of marriage, &c.:

AND WHEREAS [*recite wife's title to portion, as in last precedent*].

AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said portion should be settled in manner hereinafter appearing.

AND WHEREAS, in part performance of the said agreement, by an indenture bearing even date herewith, but executed before the execution of, and expressed to be made between the same parties as are parties to these presents, the wife, with the approbation of the husband, has assigned the said portion or sum of £——, and the interest now due and to become due thereon, to the said [*trustees*], in trust for the wife until the said intended marriage should take place, and thereafter upon such trusts, and with and subject to such powers and provisions, as should be declared and contained concerning the same by an indenture of even date therewith therein referred to, being these presents. of assignment of portion to trustees;

AND WHEREAS the husband is absolutely entitled to the several policies on his life hereinafter mentioned, and, upon the treaty for the said intended marriage, it was agreed that the same policies should be respectively assigned to the said [*trustees*] in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same. of husband's title to policies.

AND WHEREAS, &c. [*recite agreement to settle wife's after-acquired property, see Precedent I., clause* 9, ante, *p.* 349].

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared by and between the parties hereto as follows:— Declaration of trusts of portion;

1. The said [*trustees*], and the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, from and after the said intended marriage, stand possessed of the said portion or sum of £—— and interest thereon, as and when the same shall be received

VIII. OF PORTION BELONGING TO WIFE.

by them or him, upon trust to invest the said portion or sum of £——, or so much thereof as shall for the time being have been received by them or him in their or his names or name in or upon any stocks, funds, shares, or securities hereby authorised, and may from time to time vary or transpose such investments into others of any nature hereinafter authorised.

trust for investment;

trust of income for wife for life.

2. The trustees or trustee shall pay the interest or income of the said portion, and of the investments for the time being representing the same (which portion or sum and investments are hereinafter called "the trust fund") unto the wife during her life, without power of anticipation.

Power for trustees to pay income to husband or to wife's bankers.

3. PROVIDED ALWAYS, that the trustees or trustee may pay any annual income to which the wife shall at any time during the now intended coverture be entitled under the trusts of these presents, upon the request in writing of the wife [either to the husband or] into such bank or to such agent as the wife shall at any time or times during the said intended coverture nominate in that behalf, to be placed to her account at such bank or with such agent, and to continue to make such payments accordingly until she shall in writing otherwise direct.

Trust for husband for life determinable in certain events.

4. From and after the death of the wife, in case the husband shall then be living, and shall not have done, committed, suffered or concurred in any act, default, matter, or thing other than a consent to the exercise of the power of advancement hereinafter contained, whereby the income of the said trust fund, if absolutely belonging to him, would wholly or partially vest in, or become payable to, or be charged in favour of some other person or persons, or corporation, the trustees or trustee shall pay the annual income of the said trust fund to the husband during his life or until some such act, default, matter, or thing shall be done or happen (*o*): PROVIDED ALWAYS, that the trustees or trustee shall

(*o*) It may be advisable here to add the following proviso, so as to enable the husband to charge, or release his life interest in favour of a child:—

Proviso that husband may charge, &c. income in favour of a child.

"PROVIDED ALWAYS, that nothing herein contained shall prevent the husband from charging or otherwise disposing of the said income, or any part thereof, during his life or any less period [with the consent in writing of the trustees or trustee] in favour of any child of the said intended marriage who being a son shall

not be liable for paying the said income, or any part thereof, to the husband upon such determination, during his life, of the trust in his favour hereinbefore declared until such time as they shall have had express notice of the event which shall cause such determination. VIII. OF PORTION BELONGING TO WIFE.

Discretionary trust of income after determination of husband's life interest.

5. After the death of the wife and the failure or determination during the life of the husband of the trust of income hereinbefore declared in his favour, the trustees or trustee may, in the exercise of their or his absolute discretion, from time to time during the remainder of his life or during such shorter period or periods, either continuous or discontinuous, as the trustees or trustee shall think fit, pay or apply all or any part of the income of the said trust fund to or for the personal support and maintenance or otherwise for the benefit of the husband and the children or child or other issue, if any, for the time being of the said intended marriage, and the persons or person for the time being interested in the said trust fund under the ulterior trusts hereinafter declared, or such one or more exclusively of the others or other of them, and in such shares and manner as the trustees or trustee shall in their or his absolute discretion think fit; AND in the event of such failure or determination as aforesaid, and subject to such discretionary power, the trustees or trustee shall during the remainder of the life of the husband hold the income of the said trust fund upon the trusts upon which the same would for the time being be held if the husband were then actually dead.

Usual trusts in favour of children and issue.

6. From and after the death of the survivor of the husband and wife the trustees or trustee shall hold the said trust fund and the income thereof in trust, &c. [*for issue of marriage as husband and wife shall jointly appoint, remainder as survivor shall appoint*, ante, *p.* 346, *clause* 4].

Power for husband to make appointments not-

7. If the husband shall survive the wife, and if the trust hereinbefore declared in his favour shall fail or determine in his lifetime, the several powers hereinbefore given to him jointly with

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attain the age of twenty-one years, or being a daughter shall attain that age or marry within six calendar months after the date of such charge or disposition."

As to determinable life interests, see *ante*, p. 346, note (*d*).

VIII. OF PORTION BELONGING TO WIFE.

the wife, and, after her death, alone, of making appointments in favour of the issue of the said intended marriage, shall continue to be exerciseable notwithstanding such failure or determination.

withstanding the determination of his life interest (*p*).

8. In default of any such appointment as aforesaid and so far as no such appointment shall extend, if there shall be more than one child who being sons or a son shall attain the age of twenty-one, or being daughters or a daughter shall attain that age or marry, then the trustees or trustee shall stand possessed of the said trust fund and the income thereof in trust for all or both such children in equal shares; but if there shall be only one such child, then, as to one moiety of the said trust fund in trust for such only child, and as to the other moiety, upon the same trusts as are herein declared and contained concerning the said trust fund in the event of there being no such child as aforesaid.

Trusts in default of appointment for children (special in the event of there being only one child).

9. [*Hotchpot clause*, ut ante, *p.* 347, *clause* 5.]

10. [*Maintenance and accumulation (if intended)*, ibid., *clause* 6.]

11. [*Power of advancement*, *p.* 348, *clause* 7.]

12. [*Ultimate trusts in default of issue in favour of wife*, *p.* 348, *clause* 8.]

13. [*Covenant to settle after-acquired property of wife*, *p.* 349, *clause* 9, *substituting* "trust fund" *for* "wife's fund."]

Assignment of policies (*q*).

14. The husband, with the approbation of the wife, hereby as settlor assigns unto the said [*trustees*], ALL THOSE —— several policies of assurance, the particulars whereof are specified in the schedule hereto, and all moneys thereby assured or to become payable thereunder respectively, and the full benefit thereof, TO HOLD the same unto the said [*trustees*], upon trust for the husband until the said intended marriage shall take place, and thereafter upon the trusts, and with and subject to the powers and provisions herein declared and contained of and concerning the trust fund, or as near thereto as the deaths

Habendum.

Declaration of trusts by reference.

(*p*) Where, as in the present case, a discretionary trust follows a determinable life interest to the husband, it seems generally advisable that the power of appointment should continue to be exerciseable by him; otherwise it may be better to negative the exercise of the power after cesser of the life interest. In any case the intention should be expressed.

(*q*) Notice of this assignment should be given to the society.

VIII. OF PORTION BELONGING TO WIFE.

of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts, powers and provisions herein declared and contained concerning the trust fund, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the said policy moneys and the investments and income thereof in trust for the husband absolutely.

15 to 17. [*Covenants by husband for keeping up the policies, and proviso as to bonuses and power to sell or surrender,* ut ante, *p.* 352, *clauses* 12, 13 *and* 14, *with the variations shown in brackets.*]

Power to apply income or capital of trust funds in keeping up policies.

18. The trustees or trustee may in their or his uncontrolled discretion from time to time apply any part of the income of the trust premises hereby settled or covenanted or agreed to be settled, or if that shall be insufficient, then any part of the capital of any of the same trust premises in or towards payment of the annual premiums or other sums, if any, necessary for keeping on foot or restoring the said respective policies of assurance, or any of them, or any such substituted policy as aforesaid, or for effecting any such substituted policy, or to borrow the amount required for any such purpose at interest on the security of the said policies, and the other trust premises hereby settled or covenanted or agreed to be settled, or any part thereof.

19. [*Proviso for indemnity of trustees, Precedent I., clause* 15, *p.* 354, *with variations in brackets.*]

Power for husband to pay a gross sum in lieu of policies.

20. Provided always, that if the husband shall at any time during his life pay to the trustees or trustee the sum of £——, then, from and after such payment, the trustees or trustee shall stand possessed of the said policies hereby assigned, and such substituted policy or policies, if any, as aforesaid, and all moneys thereby assured or to become payable thereunder, in trust for the husband absolutely; And shall stand possessed of the said sum of £——, as and when the same shall be received by them or him, upon trust to invest the same in like manner as is herein directed with regard to the investment of the said trust fund hereby settled, with the like power of varying investments: And shall pay the income of the said sum of £——, and of the investments for the time being representing the same, unto the husband

Trusts of sum paid by husband:

for husband for life;

VIII. OF PORTION BELONGING TO WIFE.

during his life; And from and after the death of the husband shall pay the income thereof to the wife, if she shall survive him, but so that she shall not during the coverture have power to anticipate such reversionary life interest; And from and after the death of the survivor of them the husband and wife shall stand possessed of the said sum of £—— and the investments for the time being representing the same and the income thereof upon the like trusts, and with and subject to the like powers and provisions in favour or for the benefit of the children or remoter issue of the said intended marriage, or any of them, as are hereinbefore declared and contained concerning the trust fund, or as near thereto as the deaths of parties and other circumstances will admit.

for wife surviving for her life; remainder for children upon trusts by reference to settled funds;

21. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained or referred to, or by law vested in the said trustees or trustee, the said trustees or trustee shall stand possessed of the said sum of £—— and the investments for the time being representing the same and the income thereof in trust for the husband absolutely.

in default of children, for husband absolutely.

22 to 26. [*Investment clauses, Precedent I., clauses* 16 *to* 20, *pp.* 355 et seq.]

27. [*Special indemnity as to investment,* ibid., *clause* 21, p. 358.]

28. [*Power to apportion blended trust funds,* ibid., *clause* 22.]

29. [*Power to appoint new trustees,* ibid., *clause* 23.]

30. [*Power to employ agents and charge for professional business,* ibid., *clause* 24, *p.* 359.]

In witness, &c.

The Schedule above referred to.

IX. SETTLEMENT *on* MARRIAGE, *of* STOCKS, *&c., belonging to the* INTENDED HUSBAND, *who is a* FOREIGNER (*r*), *and of a* LEGACY *belonging to the* INTENDED WIFE (*an* INFANT) (*s*). *The* LIFE INTEREST *of the* WIFE *in the* PROPERTY *settled by the* HUSBAND *being made* CONDITIONAL *on her* CONFIRMATION *of the* SETTLEMENT *when she comes of* AGE. COVENANT *by the* HUSBAND *that* WIFE *shall* CONFIRM *the* SETTLEMENT. DECLARATION *that the* SETTLEMENT *shall be* CONSTRUED *according to the* LAW *of* ENGLAND.

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

THIS INDENTURE (*t*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., domiciled in —— (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), being an infant of the age of —— years or thereabouts, of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and the wife. Recitals: of intended marriage;

AND WHEREAS the husband is absolutely entitled to the stocks, funds, shares, and securities specified in the first schedule hereto; AND, upon the treaty for the said intended marriage, it was agreed that the same shall be forthwith transferred to the said [*trustees*] in trust for the husband until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same. of husband's title to stocks, &c., and agreement for settlement thereof;

AND WHEREAS the wife is absolutely entitled under the will of [*testator*], late of, &c., deceased, dated, &c., and proved, &c., to a legacy of £——, which is now represented by the several stocks, funds, shares, and securities specified in the second schedule hereto, now standing in the names of [*executors*], the of wife's title to legacy, and agreement for settlement thereof;

(*r*) As to the operation of a settlement between persons of different domiciles, see Story, Conflict of Laws, s. 276; *Re Mackenzie*, [1911] 1 Ch. 578, and the cases there cited; and Key & Elph. 10th ed. vol. 2, p. 666, note (*a*).

(*s*) As to the effect of settlements on marriage by infants, see Married Women's Property Act, 1907, s. 2; and see generally, as to infants' settlements, Key & Elph. 10th ed. vol. 2, p. 671, note (*d*).

(*t*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of value of property settled by husband and wife respectively as on the day of the date of the settlement; but the stamp must be adjudicated.

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

executors of the said will; AND, upon the treaty for the said intended marriage, it was agreed that the same legacy should be assigned in manner hereinafter appearing to the said [*trustees*], upon trust for the wife until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared of and concerning the same.

of intention that the settlement shall be regulated by English law.

AND WHEREAS it is the intention of the parties hereto that these presents shall be construed, and that the rights of all persons claiming under or by virtue of these presents shall be regulated by the law of England, in manner hereinafter appearing.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared by and between the parties hereto as follows:—

Agreement that husband's trust fund shall be held upon trusts to be declared.

1. The said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall stand possessed of the several stocks, funds, shares, and securities specified in the first schedule hereto, and the investments into or for which the same respectively, or any part thereof, may be converted or transposed (hereinafter called "the husband's fund"), upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Assignment of legacy (*tt*).

2. The wife, with the approbation of the husband, hereby as settlor assigns unto the said [*trustees*] ALL THAT legacy or sum of £—— so bequeathed to her as aforesaid, and all investments now or hereafter representing the same, and all moneys to become due and payable in respect of the same legacy, TO HOLD the said legacy and premises (hereinafter called "the wife's fund") upon trust for the said wife until the said intended marriage, and thereafter upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same.

Habendum.

Upon trusts to be declared.

Trust for retention of trust funds or sale and conversion and investment of proceeds.

3. From and after the solemnization of the said intended marriage the trustees or trustee shall either permit the husband's fund and also the wife's fund, as and when the same shall be paid or transferred to them, to remain in their actual state of investment so long as the trustees or trustee shall think fit, or shall,

(*tt*) Notice of this assignment should be given to the executors.

with the consent in writing of the husband and wife during their joint lives, or of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, from time to time sell and convert into money all or any part of such funds respectively, and invest the proceeds of such sale in or upon any of the investments hereby authorised, with power to vary or transpose such investments into or for others of a nature hereby authorised.

Trust to pay income of husband and wife's funds to husband and wife respectively for life and then to survivor.

4. The trustees or trustee shall, during the joint lives of the husband and wife, pay the income of the husband's fund to the husband, and the income of the wife's fund to the wife, without power of anticipation. And from and after the death of either of them the said husband and wife shall pay the income of as well the husband's fund as the wife's fund to the survivor of them during his or her life.

After death of survivor, for issue as husband and wife or survivor shall appoint.

5. From and after the death of the survivor of the said husband and wife, the trustees or trustee shall stand possessed of the husband's fund and the wife's fund, and the income thereof respectively, in trust, &c. [*continue trusts for issue as husband and wife shall appoint, and in default as survivor shall appoint, and in default of any appointment for children equally at twenty-one or marriage, as in Precedent I., clause* 4, ante, *p.* 346].

6. [*Hotchpot clause*, ut ante, *p.* 347, *substituting for* "wife's fund," "husband and wife's fund, or either of them."]

7. [*Advancement clause*, ut ante, *p.* 348, *substituting as above.*]

8. [*Trusts of capital in default of issue as in Precedent V., clause* 10, ante, *p.* 371.]

Proviso that wife's life-interest in husband's trust fund shall not take effect unless she shall confirm the settlement on coming of age.

9. Provided always, that the life interest hereinbefore given to the wife in the husband's fund is conditional upon her confirming the settlement hereby intended to be made of the wife's fund, and that she shall execute a proper deed confirming such settlement, and shall execute and do, or cause to be executed and done, all transfers, assurances, and things which may be necessary or expedient for the purpose of effectually vesting the wife's fund in the trustees or trustee within six calendar months of the day when she shall attain the age of twenty-one years, and if she shall refuse or neglect so to do within the time aforesaid, then and in such case the life interest hereinbefore given to the wife in the husband's fund shall, immediately upon the expiration of the six

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

calendar months aforesaid, absolutely determine, and the trusts, powers, and provisions hereinbefore declared and contained concerning the husband's fund shall take effect in all respects as if the wife were then actually dead.

Covenant by husband to confirm the settlement.

10. The husband hereby covenants with the said [*trustees*] that if the wife shall die under the age of twenty-one years, or if, after having attained that age, she shall refuse or neglect to confirm this present settlement in manner aforesaid, and if the husband shall, under or by virtue of any act or deed of the wife during her lifetime, or under her will, or as her administrator by virtue of her intestacy, become entitled to the wife's fund, or any part thereof, then and in any of such cases the husband, his executors or administrators, will forthwith, at the cost of the trust estate, execute, and do, or cause to be executed and done, all such deeds, assurances, and things as may be necessary for confirming this settlement, and making the same legally binding upon the wife, as respects the wife's fund, or such part thereof to which he shall so become entitled as aforesaid, and effectually vesting the same in the trustees or trustee, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the same (*u*).

Proviso that the settlement shall be regulated by English law.

11. And it is hereby agreed and declared by and between the parties hereto, and particularly by the husband, that these presents shall be construed and the trusts, powers, and provisions herein declared and contained shall be administered, exercised,

(*u*) If a conditional settlement made of an infant's property on her marriage contains a covenant by her father to pay an annuity or make other provision for her benefit, a proviso to the following or a like effect may be here inserted after such covenant:—

Proviso to be inserted where father covenants to pay annuity, &c.

"Provided always, that if the wife shall die under the age of twenty-one years, or if after having attained that age she shall refuse or neglect, within the time aforesaid, to confirm this present settlement in manner aforesaid, then immediately upon her death, or upon the expiration of six calendar months after she shall attain the age of twenty-one years, as the case may be, the yearly sum of £—— hereinbefore covenanted to be paid by the wife's father shall thenceforth cease to be payable, and the covenant on his part to, &c. [*state effect of provision covenanted to be made*], shall in the event of such death, refusal, or neglect, be absolutely void and of no effect."

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

and carried into effect, and that the rights of all parties claiming under or by virtue of these presents shall be regulated in like manner in all respects as if the husband and wife had been at the time of their marriage, and were now, and intended henceforth, during their respective lives, to continue and be domiciled in England.

12 to 17. [*Investment clauses, Precedent I., clauses* 16 *to* 21, ante, *p.* 355 et seq.]

18. [*Power to apportion blended trust funds,* ibid., *clause* 22.]

19. [*Power to appoint trustees,* ibid., *clause* 23; *or adapt clause* 27, *Precedent V., p.* 375.]

20. [*Power to employ agents and charge for professional business,* ibid., *clause* 24.]

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

X. DEED *of* Confirmation *by a* Wife *on attaining* Twenty-one Years *of a* Settlement *made by her while an* Infant (*x*).

TO ALL TO WHOM these presents shall come (*y*), I [*wife*], the wife of [*husband*], of, &c., send greeting: Whereas these presents are supplemental to an indenture dated, &c., and made between the said [*husband*], of the first part; myself (therein called [*maiden name*], spinster), of the second part; and [*trustees*], of the

Recitals: that the deed is supplemental to settlement;

(*x*) A confirmation in the above form will be sufficient without any assignment, as regards any equitable interest either in possession or reversion, or any personal chattels expressed to be assigned by the settlement. It will, of course, be necessary to give notice of the confirmation to the trustees of any prior settlement or will under which the wife takes an equitable interest comprised in her settlement. If, however, the settlement made during the wife's infancy comprises any real or leasehold property, such property must be formally conveyed by the wife on attaining full age to the trustees, to hold the same upon the trusts declared in the settlement.

(*y*) Stamp, 10*s.*, as it would seem that this is not a *voluntary disposition* within the Finance (1909-10) Act, 1910, s. 74; but the stamp should be adjudicated.

X. DEED OF CONFIRMATION BY A WIFE.

third part, being the settlement executed in contemplation of the then intended marriage which was shortly afterwards solemnized between the said [*husband*] and myself; AND WHEREAS I attained the age of twenty-one years on the —— day of —— last, and I have agreed to confirm the said settlement in manner hereinafter appearing: NOW KNOW YE that in pursuance of the said agreement, and in consideration of the provision made in my favour by the said [*husband*] out of the "husband's fund" mentioned in the said settlement, I do hereby confirm the said settlement so far as regards the trust funds thereby expressed to be thereby assigned by me and which, with the investments representing the same, are therein called the "wife's fund," and all moneys, stocks, funds, shares, and property whatsoever by the said settlement expressed or intended to be settled by me, to the intent that the same settlement shall take effect as fully and effectually in all respects as if I had been, at the time of the execution thereof, of the full age of twenty-one years.

that wife has attained full age.

Confirmation of settlement.

IN WITNESS, &c.

XI. SETTLEMENT *on* MARRIAGE *with the* SANCTION *of the* COURT *under the* INFANTS' SETTLEMENT ACT (18 *&* 19 *Vict. c.* 43) (*z*) *of the* WIFE'S REVERSIONARY INTEREST *to which she is* ENTITLED *in the* PERSONAL ESTATE *of a* TESTATOR. VARIATIONS *where the* WIFE *is a* WARD *of* COURT.

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c., an infant of the age of —— years (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., [*trustee*],

Parties.

(*z*) The Infants' Settlement Act, 1855, empowers an infant upon marriage to make a valid settlement with the sanction of the Court. It may be made after the marriage: *Re Sampson and Wall*, 25 Ch. D. 482; *Re Phillips*, 34 Ch. D. 467; *Re Leigh*, 40 Ch. D. 290; see also *Re Scott*, [1891] 1 Ch. 298; *Re A. B.*, [1914] W. N. 140. See, generally, as to this Act, Seton on Decrees, 7th ed. 1015; Daniell's Chancery Practice, 8th ed. 996.

(*a*) Stamp, 5*s.* per 100*l.* of value of reversionary interest, and 10*s.* in respect of covenant to settle wife's after-acquired property. The stamps should be adjudicated.

of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife, with the consent of [*wife's mother*], the mother and guardian of the wife [*recite wife's title to reversionary interest under her father's will, and agreement to settle the same, adapting recital in Precedent V., p.* 367; *agreement to settle wife's after-acquired property, Precedent I., p.* 344]; AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made by Mr. Justice ——, on the —— day of ——, in the matter of [*wife*], an infant, by [*wife's mother*], her next friend [*or*, guardian], and in the matter of the Infants' Settlement Act, 1855, the said judge, being of opinion that [the said intended marriage is a fit and proper marriage, and that] the settlement proposed to be effected by these presents is a proper settlement to be made in contemplation of the said intended marriage, and that this indenture is a proper indenture for giving effect to such settlement, did, pursuant to the said Act of Parliament, sanction and approve of such settlement as appears by the signature of one of the Masters attached to his Chambers in the margin hereof, and has ordered that the said infant be at liberty, in contemplation of her marriage with the husband, to execute these presents accordingly.

XI. SETTLEMENT ON MARRIAGE UNDER INFANTS' SETTLEMENT ACT.

Recitals: of intended marriage; of order of Court sanctioning settlement.

NOW THIS INDENTURE WITNESSETH, that in obedience to the hereinbefore recited order of the —— day of ——, 19—, and in consideration of the said intended marriage, and with the sanction of the Chancery Division of the said High Court of Justice, it is hereby agreed and declared as follows:—

Testatum.

1. The wife, with the approbation of the husband, hereby assigns unto the said [*trustees*], ALL THAT the said moiety or other the part, share or interest to which the wife is entitled under the hereinbefore recited will of the said [*testator*] of and in the net residue of the proceeds of sale and conversion of his real and personal estate in remainder expectant on the decease of the [*testator's widow*], and subject to her life interest therein as hereinbefore mentioned; TO HOLD the same subject as aforesaid unto the said [*trustees*], upon such trusts, and with and subject to such powers and provisions as are hereinafter declared and contained concerning the same.

Assignment by ward of Court of her reversionary share.

2. [*Trusts of premises assigned by wife to retain or sell and invest proceeds, see Precedent VI., clause* 2, ante, *p.* 378, *followed by*—

3 to 9. *Usual trusts for wife, husband, and issue of marriage,*

XI. SETTLEMENT ON MARRIAGE UNDER INFANTS' SETTLEMENT ACT.

with ultimate trusts for benefit of wife, see Precedent I., clauses 2 to 8, omitting, if thought fit, the maintenance clause.]

10. [*Covenant to settle after-acquired property*, ibid., *clause* 9, *p.* 349.]

Power for wife to appoint to a future husband and her children by him a moiety of the trust funds(*b*).

11. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband, it shall be lawful for the wife, at any time or times after the death of the husband, and whether she shall be covert or sole, by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil, to appoint in favour of any after-taken husband, and of her child or children by any future husband or husbands, any part not exceeding one-half of the said trust fund hereby settled or covenanted or agreed to be settled by or on the part of the wife, but so that no such future husband shall by virtue of any such appointment take any greater interest in such property than for his life, and that the trusts, powers, and provisions in favour of the child or children of the wife by any such future husband shall be similar to those herein declared in favour of the child or children of the now intended marriage, failing which trusts, the portion of trust property to be appointed under this power shall remain subject to the trusts of this settlement, and so that no child or children of any such future marriage shall, by virtue of any such appointment, become entitled to any share or portion exceeding in amount or value the share or portion which, in the absence of any appointment under the power of appointment hereinbefore contained, a child of the now intended marriage would take or become entitled to in the said trust fund hereby settled or agreed to be settled, AND so that the interest or share of property to be appointed under this power shall not be withdrawn from the trusteeship of these presents until absolutely and indefeasibly vested in some person in possession.

12 to 17. [*Investment clauses, Precedent I., clauses* 16 *to* 21, *p.* 355 (*c*).]

18. [*Power to appoint new trustees, Precedent I., clause* 23, *p.* 358.]

(*b*) In a settlement of the property of a female infant the Court will require provision to be made out of her fortune for the issue of a future marriage: *Rudge* v. *Winnall*, 11 Beav. 98. Alternative forms of clauses making such provision will be found in Precedent I., *ante*, p. 350, clause 10 and note (*l*).

(*c*) This will be settled in Chambers.

19. [*Power to employ agents, Precedent I., clause* 24, *p.* 359 (*d*).]

In witness, &c. (*e*).

XII. ARTICLES *for a* Marriage Settlement *of* Personal Property *belonging to the* Intended Husband *and* Wife *respectively* (*f*).

AN AGREEMENT (*g*), made the —— day of ——, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the third part WITNESSETH and, in consideration of the marriage shortly intended to be solemnized between the husband and wife, it is hereby agreed and declared as follows, that is to say:—

Parties.

Testatum.

Agreement for settlement;

1. Within —— calendar months from the date of these presents, if the said intended marriage shall then have taken place, the husband and wife respectively shall transfer to the trustees the stocks, funds, and securities to which each is respectively entitled,

that husband shall transfer stock, &c., to trustees;

(*d*) This clause should not contain a power for a solicitor-trustee to charge for work done, as the Court would not allow it to be inserted.

(*e*) Notice of this settlement must be given to the trustees of the will. A reference to the record must be engrossed on the first skin of the engrossment, and the engrossment must be verified by affidavit: see Daniell's Chancery Forms, No. 1200.

(*f*) As to the form of settlements in pursuance of marriage articles, see notes to *Glenorchy* v. *Bosville*, White & Tudor's L. C.; Norton on Deeds, 609; Vaizey on Settlements, 140.

(*g*) Stamp, 5*s.* per 100*l.* on the amount agreed to be settled. The stamp on the settlement made in pursuance of the articles would seem to be 10*s.* (see Stamp Act, 1891, s. 106); but it should be adjudicated, especially as it is not usual to refer to the articles when the settlement is made in pursuance of ante-nuptial articles other than by a recital, as follows:—

"Whereas the husband and the wife intermarried on the —— day of ——, and previous to such marriage they agreed to make such settlement as is hereinafter declared."

XII. MARRIAGE ARTICLES FOR SETTLEMENT OF PERSONALTY.

and which are set out in the schedule hereto, namely, those to be settled by the husband in the first part thereof and hereinafter called "the husband's fund," and those to be settled by the wife in the second part thereof and hereinafter called "the wife's fund," such settlement to be prepared by the trustees as soon as may be after the said intended marriage, in accordance with the trusts, powers, and provisions hereinafter mentioned.

As to contents of intended settlement;

2. The settlement so to be prepared as aforesaid shall contain the trusts and powers and provisions following, that is to say: A trust to get in and receive all such parts of the said trust premises as shall not have been assigned or transferred unto or received by the trustees, and to invest in or upon such stocks, funds, shares, or securities as shall hereafter be agreed upon between the parties hereto all such parts of the same as shall not be so invested (*h*), with power for the trustees to vary such investments, but so that no investment or variation of investments shall be made during the lives or life of the husband and wife, or the survivor of them, except with their, his or her consent in writing: AND ALSO further trusts to pay the income of the husband's fund to the husband during his life, and the income of the wife's fund to the wife for her life, without power of anticipation, and after the decease of either of them to pay the income of both trust funds to the survivor, and after the death of such survivor to hold the capital and income of both trust funds, upon trust for the children or remoter issue of the said intended marriage in such shares and in manner in all respects as the husband and wife shall jointly by deed appoint; AND subject thereto as the survivor of them shall by deed or will appoint; AND subject thereto in trust for the children or child of the said intended marriage being sons or a son at twenty-one, or being daughters or a daughter at that age or on marriage, if more than one, in equal shares; AND subject to the foregoing trust, as to the husband's fund, in trust for the husband absolutely, and as to the wife's fund, in trust for such persons and purposes as the wife shall by will, or while not under coverture, by deed or will appoint, and, in default of such appointment if the wife shall survive the husband, for her absolutely, but if the husband shall survive the wife, for her next of kin as if

(*h*) It will be better, if possible, to agree as to the investments before the articles are made, and to insert an investment clause in the articles.

she had died intestate and without ever having been married. The said settlement shall contain all such clauses with respect to maintenance, education, advancement, hotchpot and other clauses as shall be thought advisable or expedient, and also a covenant or agreement for the settlement of all other or after-acquired property of or to which the wife may be or become entitled during the said intended coverture.

that husband and wife shall execute settlement, and for further assurance;

3. The husband and wife, and their respective heirs, executors, and administrators, and all other necessary parties, if any, shall, when required by the trustees, and also the trustees shall execute the said settlement, and also execute and do all such conveyances, transfers, instruments, acts, and things as may be necessary for the carrying into effect of the said settlement.

that until execution of settlement, &c., property shall be held upon trusts expressed in this agreement.

4. From and after the said marriage and until the said settlement, conveyances, transfers, instruments, acts, and things shall have been executed and done, the property hereby agreed to be settled shall be held by the persons in whom the same is vested respectively and their respective heirs, executors, administrators, and assigns, upon the trusts and subject to the powers and provisions concerning the same hereinbefore directed to be contained in the said settlement.

Interpretation clause.

5. The expression "the trustees," as hereinbefore used, shall include the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of these presents.

As to appointment of new trustees.

6. The power of appointing new trustees of these presents and of the said intended settlement shall be vested in the husband and wife during their joint lives, and the survivor of them during his or her life.

As to expenses of settlement, &c.

7. The costs of and incident to the negotiation, preparation, engrossment, and execution of these presents and of the said settlement, and of all such conveyances, transfers, instruments, acts, and things as aforesaid, shall be paid by the husband [*or*, out of the husband's and wife's funds in equal shares].

As to determination of differences as to construction and effect of this agreement.

8. In case of any dispute or difference between the parties hereto, as to the trusts, powers, or provisions proper to be inserted in the said settlement, so as to carry into effect the stipulations hereinbefore contained, or as to the true intent and meaning of these presents, or as to any matter or thing whatsoever relating to the said settlement, and these presents respectively, such dispute

XII. MARRIAGE ARTICLES FOR SETTLEMENT OF PERSONALTY.

or difference shall be referred to a conveyancing counsel of not less than —— years' standing, whose opinion shall be final and conclusive.

As witness, &c.

The Schedule hereinbefore mentioned.

Part I.

[*A list of securities comprising husband's fund.*]

Part II.

[*A list of securities comprising wife's fund.*]

XIII. SETTLEMENT *on* Marriage *of* Furniture *belonging to the intended* Wife, *for the* Benefit *of* Herself *and her* Children (*hh*).

THIS INDENTURE (*i*), made the —— day of ——,

Parties.

Between [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part; WITNESSETH, that, in consideration of the marriage intended shortly to be solemnized between the said [*husband*] and [*wife*], the said [*wife*], with the approbation of the said [*husband*], hereby assigns unto the said [*trustees*], All and singular the furniture, plate, linen, china, glass, household and domestic goods and ornaments now belonging to the said [*wife*], and more particularly set out in the schedule hereto; To hold the said premises in trust for the said [*wife*] absolutely, until such marriage: And thenceforth upon such trusts as the said [*wife*], notwithstanding coverture, shall by any writing under her hand, or by will or codicil, appoint, and subject thereto upon trust to allow the said [*wife*] to use and enjoy the same during her life; And after her decease (*k*), in trust for such child or children of the said intended marriage as

Assignment of furniture, &c.;

after marriage, in trust as wife shall appoint; and, subject thereto, for her separate use after her decease, for children at

(*hh*) As to the effect of assigning furniture to trustees, see *Re Magnus*, [1910] 2 K. B. 1049.

(*i*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the furniture.

(*k*) If it is desired that the husband shall take a life interest as survivor, then after "And subject thereto," substitute for the words in the text—"Upon trust to allow the said [*wife*] to use and enjoy the same during the joint lives of herself and the said [*husband*], and after

shall attain the age of twenty-one years, or marry under that age, if more than one, in equal shares; AND if there be no such child, in trust for the said [*wife*], her executors, administrators, and assigns; AND it is hereby agreed and declared that the said [*trustees*], or the survivors or survivor of them, or other the trustees or trustee for the time being of these presents, shall not be bound to see to the preservation or to be answerable for the loss or destruction of the said furniture and effects, or any part thereof.

XIII. SETTLEMENT ON MARRIAGE OF FURNITURE.

twenty-one, or marriage.

[*Power to appoint new trustees, Precedent I., clause* 23, ante, *p.* 358.]

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

XIV. DECLARATION *of* TRUST (*by Supplemental Deed*) *of* STOCKS, *&c., added to* TRUST FUNDS *comprised in a* SETTLEMENT (*l*).

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*settlor*], of, &c., of the one part, and [*trustee No.* 1], of, &c., [*trustee No.* 2], of, &c., and [*trustee No.* 3], of, &c., of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a settlement made and executed in consideration of the then intended marriage, which was shortly afterwards solemnized between the said [*husband*] and [*wife*].

Parties.

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the death of either of them, to allow the survivor to use and enjoy the same during his or her life, and after the decease of such survivor in trust," &c.

(*l*) In most cases where additions are made to trust funds, a mere memorandum not under seal according to the form given in the next precedent will be sufficient.

(*m*) Stamp, 1*l.* per 100*l.* or part of 100*l.* of the value of the property added to the trust funds as a voluntary disposition *inter vivos:* see Finance (1909-10) Act, 1910, s. 74. The value of the additional stocks, &c. must, for the purpose of stamp duty, be ascertained as at the date of the supplemental deed. The stamp must be adjudicated. Estate duty will be payable if the settlor dies within three years (see sect. 59 of the last-mentioned Act), but not settlement estate duty: *Att.-Gen.* v. *Milne,* [1914] W. N. 178. If the amount added is under 500*l.*, the lower rate of duty will be payable, but a statement as to value must be added: see Vol. I. "Conveyances," p. 308.

XIV. DECLARATION OF TRUST OF STOCK ADDED TO SETTLED FUNDS.

Recitals: of death of original trustee, and appointment of new trustee;

WHEREAS [*deceased trustee*] died on the —— day of ——, 19—, and by an indenture dated, &c., and made, &c., and indorsed on the principal indenture, in pursuance of a power contained in the same indenture, the said [*trustee No.* 3] was duly appointed to be a trustee in the place of the said [*deceased trustee*] for the purposes of the principal indenture, and the trust funds and property subject to the trusts of the principal indenture were, by the indenture now in recital or immediately after the execution thereof, duly assured and transferred to, or otherwise effectually vested in the said [*trustee No.* 3] jointly with the said [*trustees Nos.* 1 *and* 2] upon the trusts of the principal indenture.

of transfer by settlor of stocks, &c. to trustees.

AND WHEREAS the said [*settlor*] has transferred into the names of the said [*trustees*] the several stocks, funds, shares, and securities following, that is to say [*set out stocks*] [*or*, the several stocks, funds, shares, and securities, the particulars whereof are specified in the schedule hereto], to the intent that the same shall be held upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Declaration that stocks, &c. transferred shall be held on trusts of settlement.

NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared, that the said [*trustees*], and the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee of the principal indenture, shall stand possessed of the said several stocks, funds, shares, and securities so transferred to them as aforesaid, and the stocks, funds, shares, and securities for the time being representing the same and the income thereof, upon such trusts, and with and subject to such powers and provisions as are by and in the principal indenture declared and contained concerning the trust funds and property [*or*, the husband's fund] therein comprised and thereby settled, or such of the same trusts, powers, and provisions as are now or may henceforth be subsisting or capable of taking effect, but not so as to increase or multiply charges or powers of charging (*n*) to the intent that the said several stocks, funds, shares, and securities so transferred to the said [*trustees*] as aforesaid may form an addition to and be one fund with the trust funds and property [*or*, the husband's fund] originally settled by the principal indenture for

(*n*) As to multiplying powers of charging, see *Re Beaumont*, [1913] 1 Ch. 325.

all purposes, including (so far as that object can be effected hereby) the operation of the hotchpot clause therein contained.

XIV. DECLARATION OF TRUST OF STOCK ADDED TO SETTLED FUNDS.

IN WITNESS, &c.

[THE SCHEDULE ABOVE REFERRED TO.]

XV. MEMORANDUM (*to be* INDORSED *on a* SETTLEMENT) *of the* ADDITION *of a* SUM *of* STOCK *to the* TRUST FUNDS.

MEMORANDUM (*o*) that I, the within named [*settlor*], did, on the —— day of ——, 19—, transfer into the names of the within named [*trustees*] [*or*, of [*trustees*], the present trustees of the within written indenture], the sum of £——, —— Stock, to be held by the trustees or trustee for the time being of the within written indenture, upon the trusts by the same indenture declared concerning the trust funds [*or*, the wife's fund] thereby settled so far as the same trusts are still subsisting.

AS WITNESS my hand this —— day of ——, 19—.

XVI. CONVEYANCE *of* FREEHOLDS *in* TRUST *for* SALE; *the* PROCEEDS *of* SALE *to be held upon* TRUSTS *declared by a* DEED *of even* DATE (*p*). POWERS *of* LEASING, *&c.*

THIS INDENTURE (*q*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., Parties.

(*o*) Stamp, 1*l.* per 100*l.* or part of 100*l.* of the value of the property added to the trust funds: see note (*m*) to last precedent.

(*p*) This mode of settling a small landed estate is the most convenient that can be adopted. The trust for sale will not be carried into effect unless it is found expedient to do so, and the effect of the settlement will, therefore, be the same as if the lands had been settled, as was sometimes done, directly to uses for the benefit of the parties and their children, with a power of sale, except that the property is, by virtue of the trust for sale, at once converted into personalty.

(*q*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the land. If, as is probable, it is intended to keep the settlement off the title, this deed should bear the full stamp, and the settlement a denoting stamp, so far as the freeholds are concerned. It would be as well to have the stamps adjudicated.

XVI. CONVEYANCE OF FREEHOLDS IN TRUST FOR SALE.

and [*trustee*], of, &c., of the third part: WITNESSETH as follows:—

In consideration of marriage, settlor conveys freeholds,

1. In consideration of the marriage which is intended shortly to be solemnized between the said [*husband*] and [*wife*], the said [*husband*], with the approbation of the said [*wife*], hereby as settlor grants unto the said [*trustees*] and their heirs, ALL [*parcels*], TO HOLD the said hereditaments and premises unto the said [*trustees*] and their heirs, to the use of the said [*husband*], his heirs and assigns, until the said intended marriage, and thereafter to the use of the said [*trustees*], their heirs and assigns, upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, with the consent in writing of the said [*husband*] and [*wife*], or of the survivor of them, during their, his, or her lives or life, and after the decease of the survivor of them, at the discretion of the trustees or trustee, sell (*r*) the said hereditaments and premises, or any part thereof.

Habendum, to the use of the husband until the marriage, and then to the use of the trustees upon trust for sale.

Declaration of trusts of proceeds of sale;

2. The trustees or trustee shall stand possessed of the net moneys arising from any such sale after payment thereout of the costs and expenses thereof, or otherwise incurred in respect of the premises [and the rents and profits of the said hereditaments, and every part thereof, until the same respectively shall be sold] (*s*), upon the trusts, and with and subject to the powers and provisions, declared and contained concerning the same respectively by and in an indenture already prepared and intended to bear even date with, but to be executed immediately after the execution of these presents, and expressed to be made between the same parties as are parties hereto.

and of rents and profits till sale (*t*).

3. The trustees or trustee shall pay the rents and profits of the said hereditaments and premises until the same respectively shall be sold, to the said [*husband*] and his assigns during his

(*r*) As to the powers implied by a power of sale, see Trustee Act, 1893, s. 13; and the notes on this section in Wolstenholme, 10th ed. p. 268.

(*s*) In the event of the words in these brackets being used, clause 3 may be omitted; but see note (*t*) below.

(*t*) The form of declaration of trusts here given seems to be advisable where the intention is that the property should not be sold shortly after the execution of the conveyance, or, in the case of a reversionary interest, after its falling into possession, but that it shall for some time to come be retained as land. In such a case, it may happen that, at some future

life, and after his death to the said [*wife*] and her assigns during her life [for her separate use, but so that she shall not during the said intended coverture have power to dispose of or charge such reversionary life interest by way of anticipation]; AND after the death of the survivor of them the said [*husband*] and [*wife*] shall stand possessed of the rents and profits of the said hereditaments and premises until the same shall be sold, upon such trusts and with and subject to such powers and provisions as are declared and contained concerning the same respectively by and in the said indenture intended to bear even date herewith.

Power to manage (*u*) (*short form*);

4. While the said hereditaments hereby assured, or any of them, shall remain unsold under the trust for sale hereinbefore contained, the trustees or trustee may receive the rents and profits thereof, and may, at the cost of the said trust premises, repair, drain, improve, insure from fire, and manage the same, or such parts thereof as for the time being shall remain unsold; AND ALSO may adjust and determine in what proportions the expense of draining or other improvements shall be borne by the capital and income of the said trust premises respectively; AND ALSO may adjust, compound, and settle all accounts and claims respecting the same, and make such allowances to tenants and others in relation thereto as they or he shall think just; AND ALSO may exercise all or any of the powers of management lastly hereinbefore contained, either in person or by salaried agents, bailiffs, or deputies.

power to delegate.

Power to grant building and

5. The trustees or trustee may, with the consent of the said [*husband*] and [*wife*], and the survivor of them, and after the

time, "the person for the time being beneficially entitled to the income of the land until sale" may obtain leave of the Court under sect. 7 of the Settled Land Act of 1884 to exercise the statutory power of sale of a tenant for life; and should he do so, it will be convenient that his life interest should appear on the face of the deed of conveyance, so as not to make the contemporary deed of settlement part of the title to the land and entitle a purchaser to an acknowledgment of his right to production of such last-mentioned deed. Where, however, an immediate sale is contemplated, the alternative form of declaration of trust given above may be adopted, if preferred.

(*u*) For fuller powers of management, leasing, &c., see next precedent. If it is desired that the deed shall be as concise as possible, the powers of leasing, management, &c. may be given by reference to the powers mentioned in the Conveyancing Act, s. 42: see *post*, p. 416, note (*f*).

XVI. CONVEYANCE OF FREEHOLDS IN TRUST FOR SALE.

death of the survivor of them, at the discretion of the trustees or trustee, let or demise the said hereditaments hereby assured, or any part thereof, which for the time being shall remain unsold for building, repairing, or improving purposes, for any term or terms not exceeding ninety-nine years, or for mining purposes for any term or terms not exceeding forty years, and for any consideration or considerations, either by way of fine, premium, rent, royalty, or otherwise, which they or he shall consider fair and adequate, or for cultivation, use, or occupation, at the best rent for the time being obtainable, without taking any premium or fine, either from year to year or for any term not exceeding twenty-one years from the time of letting, and with, under, and subject to such covenants and conditions as the trustees or trustee shall think proper; but so that every lease shall take effect in possession or within —— calendar months from the granting thereof, and shall be executed in counterpart by the lessee or lessees, and that any premium or fine shall be treated as if it were proceeds of the sale of the hereditaments in respect of which it is received (*x*).

improving leases; mining leases, and husbandry leases (*short form*).

Provision as to increment value and reversion duties.

6. If at any time the trustees or trustee shall become liable to pay increment value duty or reversion duty in respect of the hereditaments hereby assured, or any part thereof, they or he may, either before or after assessment, provide for such duty and their costs (including valuation) in connection therewith out of moneys arising from the sale of the said hereditaments under the trust hereinbefore contained, or from a sale which is hereby authorised to be made for that purpose, of the unsold part of the said hereditaments. Any moneys appropriated by the trustees or trustee for the purpose of meeting such duty and costs may be paid by them or him to an account in their or his names or name at a bank until assessment of the duty. AND the balance of such moneys, after payment of the duty and costs, shall be held and treated as moneys arising under the trust for sale.

Powers as to land value duties.

7. The trustees or trustee may at any time at their or his discretion—

(1) Pay any duties imposed by the Finance (1909-10) Act,

(*x*) If desired, a proviso may be here inserted giving lessees under building leases an option to purchase the reversion: see next precedent, clause 8, p. 415.

1910, or any amending Act, at the amount assessed by the Commissioners of Inland Revenue. XVI. CONVEYANCE OF FREEHOLDS IN TRUST FOR SALE.

(2) Take any proceedings they or he may think fit for resisting the whole or part of such payment.

(3) Convey or transfer any property subject to the trusts hereof, or any interest therein, to the said Commissioners in or towards satisfaction of any death duties payable in respect of the trust premises.

8. The powers of appointing new trustees of these presents, as and when occasion shall arise, shall be vested in the said [*husband*] and [*wife*] jointly during their joint lives, and in the survivor of them during his or her life. Power to appoint new trustees.

9. The said [*husband*], or any person deriving title under him, shall not be liable by reason of the covenant implied by the said [*husband*] having hereby conveyed as settlor to discharge or get in any incumbrance or estate not created by him or any such person. Restriction of liability under statutory covenant as "settlor" (*y*).

10. [*Power to employ agents, &c., as in Precedent I.*]

In witness, &c.

XVII. CONVEYANCE *on* Marriage *of* Freeholds, Copyholds, *and* Leaseholds *belonging to the* Intended Husband, *upon* Trust *for* Sale; Power *to* Sell *for* Fee Farm Rents. *Extensive* Powers *of* Partition, Exchange, Enfranchisement, Management, Leasing, *&c.* (*z*).

THIS INDENTURE (*a*), made the —— day of ——, Between [*intended husband*], of, &c. (hereinafter called "the

(*y*) See Conveyancing Act, 1881, s. 7 (E.). It will be safer, where the title of the settlor has not been fully investigated, to qualify the settlor's implied covenant by inserting this clause, in case there should be any outstanding prior estate or incumbrance which has been overlooked.

(*z*) In this precedent large powers are given to the trustees of dealing with the property until it is sold. Such powers were formerly often inserted not only in conveyances but also in real settlements; but the necessity for their insertion in the latter class of instruments is in great measure superseded by the provisions of the Settled Land Acts. It has been thought well to collect in this place a set of extensive powers of this nature, but it is obvious that it will seldom be necessary to insert them all in the same conveyance. (*a*) Stamp, see note (*q*), p. 405.

XVII. CONVEYANCE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS ON TRUST FOR SALE, WITH EXTENSIVE POWERS.

husband "), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

Recitals: of intended marriage; of husband's title to lands described in schedules;

AND WHEREAS the husband is seised of or entitled to the several messuages, lands, and hereditaments particularly described in the first schedule hereto for an estate of inheritance in fee simple in possession, and is also seised of or entitled to the lands and hereditaments particularly described in the second schedule hereto, to him and his heirs, according to the customs of the several manors mentioned in the same schedule whereof such last-mentioned lands and hereditaments are respectively holden, and subject to the rents and services therefor due and of right accustomed respectively: AND is also possessed of or entitled to the several messuages and lands particularly described in the third schedule hereto for the residues of the several terms therein respectively created by the several leases which and the mesne assignments thereof respectively, are also mentioned in such last-mentioned schedule, and are therein set opposite to the properties to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively.

of agreement for conveyance on trust for sale.

AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said freehold, copyhold, and leasehold premises should be assured unto the said trustees, their heirs, executors, administrators, and assigns respectively, in manner hereinafter appearing upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively.

NOW THIS INDENTURE WITNESSETH as follows:—

Grant of freeholds.

1. In pursuance of the said agreement, and in consideration of the said intended marriage, the husband, with the approbation of the wife, hereby, as settlor, grants unto the said [*trustees*],

Parcels.

ALL THAT the messuage or dwelling-house called ——, with the stables, outbuildings, gardens and pleasure-grounds thereto belonging, and the several manors, messuages or dwelling-houses, farms, lands and hereditaments situate in the parishes of —— and ——, in the county of ——, and particularly described in the first schedule hereto, To HOLD all the premises hereby granted unto the said [*trustees*] and their heirs, to the use of the

Habendum. Upon trusts to be declared.

said husband and his heirs until the said intended marriage, and thereafter to the use of the said [*trustees*], their heirs and assigns, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Covenant to surrender copyholds.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the husband hereby, as settlor, covenants with the said [*trustees*], that in case the said intended marriage shall take place, he the husband, or his heirs, will forthwith, at his or their own cost, surrender into the hands of the lords of the manors of which the same are respectively holden, and according to the several customs of such manors respectively, ALL THOSE messuages, lands, and hereditaments situate in the parishes of —— and —— [aforesaid], and particularly described in the second schedule hereto, to the use of the said [*trustees*], their heirs and assigns, according to the several customs of the said manors, and at and under the several rents, fines, suits, and services therefor due, and of right accustomed respectively, to be held upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same: AND the husband hereby declares that from and after the said intended marriage, and until the said hereditaments and premises hereby covenanted to be surrendered, shall be surrendered pursuant to the covenant in that behalf hereinbefore contained, he the husband and his heirs will stand possessed thereof in trust for the said [*trustees*], their heirs and assigns.

Declaration of trusts of copyholds till surrender.

Assignment of leaseholds.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the husband hereby, as settlor, assigns unto the said [*trustees*], ALL THOSE the several messuages and pieces or parcels of land situate in the parishes of —— and —— [aforesaid], particularly described in the third schedule hereto; TO HOLD all the premises hereby assigned unto the said [*trustees*] for the residues of the several terms therein respectively granted by the several indentures of lease which in the third schedule hereto are respectively set opposite to the properties to which the same respectively relate, subject to the several rents and covenants on the part of the lessee and to the conditions reserved by and contained in the said leases respectively, in trust for the husband, his executors, administrators, and assigns, until the said intended marriage and afterwards upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Habendum.

XVII. CONVEYANCE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS ON TRUST FOR SALE, WITH EXTENSIVE POWERS.

Declaration of trust for sale of lands assured.

4. It is hereby agreed and declared that the said [*trustees*], their heirs, executors, administrators, and assigns respectively, shall, from and after the said intended marriage, stand seised and be possessed of the freehold, copyhold, and leasehold hereditaments and premises hereby granted, covenanted to be surrendered, and assigned respectively upon trust that the said [*trustees*], or the survivors or survivor of them (*b*), or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, at the request in writing of the husband and wife, or the survivor of them, during their, his or her lives or life, and after the death of such survivor at the discretion of the trustees or trustee, sell the said freehold, copyhold, and leasehold hereditaments and premises hereby granted, covenanted to be surrendered, and assigned respectively, or any part thereof respectively.

Power for trustees to apportion rents, if necessary.

5. The trustees or trustee may, on any sale of any of such hereditaments and premises as may be subject to a fee farm rent or perpetual rentcharge, or comprised in any lease at a yearly rent, apportion any such fee farm rent, rentcharge, or yearly rent, and make such arrangements and provisions (including, where appropriate, the granting of an underlease) for securing payment by the purchaser or purchasers of the apportioned part or parts thereof, and for the performance and observance of the covenants and conditions of the grant or lease affecting the several parts of such hereditaments and premises as aforesaid, and for giving and receiving such indemnities as may seem proper or expedient with regard to the payment of, and liabilities in respect of such fee farm rents, rentcharges, and yearly rents.

6. [*Declaration of trusts of proceeds of sale and of rents till sale, Precedent XVI., clause 2, p. 406.*]

Powers for trustees to exchange;

7. After the said intended marriage, and so long as any of the said hereditaments hereby assured remain unsold, the trustees or trustee may, at such request or at such discretion as aforesaid, do all or any of the things following, that is to say:—(a) exchange (*c*)

(*b*) As to the devolution of the trust estate in freeholds, see sect. 30 of Conveyancing Act, 1881; and as to copyholds, see sect. 88 of the Copyhold Act, 1894; and see *Re Mills' Trust*, 37 Ch. D. 312; 40 Ch. D. 14.

(*c*) This includes a power to pay or receive money for equality of exchange: *Bartram* v. *Whichcote*, 6 Sim. 86.

any of the hereditaments for the time being subject to the trusts of these presents for other freehold or copyhold hereditaments in England or Wales, held in fee simple, or for leasehold messuages or lands held for an absolute unexpired term of not less than ninety-nine years, and upon any such exchange may pay or receive money either in gross or by way of rent for equality of exchange; any property so taken in exchange to be conveyed, as nearly as may be, to the uses and upon the trusts affecting the hereditaments so given in exchange immediately before such exchange.

to enfranchise;

(b) Enfranchise any copyhold or customary hereditaments held of any manor, for the time being subject to the trusts of these presents for any of the considerations mentioned in the 15th section of the Copyhold Act, 1894, or wholly or in part in consideration of a rentcharge or rentcharges issuing out of and charged on all or any part of the hereditaments hereby assured, and generally upon such terms and in such manner as the trustees or trustee shall think fit.

to grant licences to copyholders;

(c) Grant to any copyholder or customary tenant of any manor for the time being subject to the trusts of these presents, such licence as the trustees or trustee shall think proper to demise or lease all or any part of the messuages, lands, tenements, and hereditaments holden by such copyholder or tenant, or forming part of the waste of such manor for any term of years not exceeding the terms following respectively, that is to say, in the case of a demise or lease for building, repairing or improving purposes, the term of ninety-nine years, and in the case of any other demise or lease the term of twenty-one years, every such term to commence and take effect in possession or within six calendar months from the date of such lease, and to build upon or otherwise improve any premises so holden or forming part of such estate as aforesaid, and for such purposes to annex adjacent waste land, pull down messuages or buildings, make roads and streets, and execute and do any necessary or convenient works and things; AND ALSO on granting any such licence, to determine the annual value during the term therein mentioned, in respect of which fines, fees, and other payments are to be assessed, and the amount of such fines, fees, or payments, and so that every such licence shall be entered on the court rolls of the manor to which the same shall apply.

to sell for

(d) Sell either by way of conveyance of the fee absolute or

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customary, or by way of demise for a term of years of any duration, all or any part of the freehold and copyhold hereditaments hereby granted and covenanted to be surrendered upon trust for sale respectively in consideration of fee farm rents or perpetual rentcharges, or of the best yearly rents which can for the time being be reasonably obtained, such fee farm rents, rentcharges, and other rents respectively to be issuing or reserved out of and secured upon the hereditaments sold, or any part thereof, either alone or together with other hereditaments, or partly in consideration of such fee farm rents, rentcharges, or other rents, and partly in consideration of a gross sum of money, but so that any such rentcharge shall be limited or reserved and secured and made payable in such manner as the trustees or trustee shall think expedient, and shall be held by them or him upon the like trust for sale as is hereby declared and contained concerning the said hereditaments hereby assured, and so that such rentcharge until sold, and the proceeds of sale thereof, shall be held upon the trusts, and with and subject to the powers and provisions declared and contained concerning the income of the same proceeds of sale by and in the said indenture of even date with these presents hereinbefore referred to.

fee farm rents, &c.

Power for trustees to build, appropriate streets, &c.

(e) Lay out all or any part of the hereditaments and premises hereinbefore assured on trust for sale, for building purposes, and to appropriate and lay out any parts thereof, as they or he shall think fit, for streets, roads, ways, squares, gardens, or other open spaces, and to build, erect, lay down, make and execute upon, in, or under any parts of the same hereditaments and premises any messuages, buildings, sewers, drains, gas pipes, and electrical installation, water pipes, water courses, fences, and other works necessary for or in connection with building purposes.

Power to lease.

(f) Accept surrenders of any existing leases or tenancies of the said lands and premises, or any part thereof, and demise or lease the same, or so much or such parts thereof as for the time being shall remain unsold, or any part of the same, for any term of years not exceeding twenty-one years, or for a mining lease not exceeding forty years, or for a building or improving lease not exceeding ninety-nine years, to take effect in possession or within six calendar months from the date of the lease [*or*, "for any term of years either in possession or reversion, and for any purpose"], with or without taking a fine or premium, and upon such terms and con-

ditions as the trustees or trustee shall think proper, but so that there be contained in every such lease a condition of re-entry for non-payment of the rent thereby to be reserved, and so that the lessee execute a counterpart thereof, and thereby covenant for the payment of the rent: AND so that any sum received as a fine or premium shall be applied as if the same were proceeds of a sale under the trusts hereinbefore contained, and also so that on a surrender and the making of a new or other lease or tenancy, the value of the interest so surrendered or the tenant right or claim to compensation for improvements or otherwise in respect of such tenancy may be taken into account in fixing the terms of the new lease (*d*).

Power to give option of purchase in building lease.

8. PROVIDED ALWAYS, that any building lease and any agreement for a building lease under the powers of leasing hereinbefore contained may contain an option to be exercised at any time within an agreed number of years, not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of making such lease or agreement, such price to be the best which, having regard to the rent reserved, can reasonably be obtained, and to be either a fixed sum of money or such a sum of money as shall be equal to a stated number of years' purchase of the highest rent

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(*d*) If preferred, the following clause may be substituted for the leasing powers given in the text:—

Power for trustees to exercise statutory powers of leasing, &c., conferred by the Settled Land Act, 1882.

"PROVIDED ALWAYS, that it shall be lawful for the trustees or trustee, at such request, or at such discretion as aforesaid, to exercise, in respect to the said hereditaments and premises hereby granted, covenanted to be surrendered, and assigned respectively, all such powers of leasing and accepting surrenders of leases, and entering into, varying, and rescinding contracts with regard to leases, and powers incidental or ancillary thereto respectively, and generally all such other powers of every description which the trustees or trustee shall deem it proper or expedient to exercise, as are by the Settled Land Acts, 1882 to 1890, and any amending Acts for the time being in force, conferred on tenants for life; AND FURTHER (by way of extension or enlargement of the powers of the said Acts, and so that such extended or enlarged powers shall be exercised in like manner and with the like effect as if they were powers conferred by the said Act) that it shall be lawful for the said trustees or trustee, &c." [*add any additional powers which may be thought advisable*].

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reserved by the lease or agreement, and such price, when received, shall for all purposes be held as capital money arising under the Settled Land Act, 1882 (*e*).

9. After the said intended marriage, and until sale of all the said freehold, copyhold, and leasehold hereditaments, the trustees or trustee may, at their or his discretion, do all or any of the following things, that is to say—

Power to trustees to manage and receive rents until sale of lands (*f*).

(i) Manage or superintend the management of any hereditaments for the time being subject to the trusts hereof, with power to make allowances and arrangements and settle accounts to or with tenants, and to cut timber for repairs or sale, and to open and work mines, quarries, and brickfields, and to stock, equip, work, and carry on farms in hand, and to erect, repair, pull down and rebuild houses and buildings, and to make drains, roads, and fences, and to improve the said premises, or any part thereof, and to insure buildings against damage by fire, and pay out of the rents and profits, or out of the income of any capital moneys which shall for the time being be in their or his hands under the trusts of these presents, all or any ground or other rents, charges or annual sums, and all other outgoings, and the costs of and incident to the exercise of such powers of management and improvement, and generally to do all such acts and things in relation to the premises as they might do if they or he were the absolute owners or owner thereof, without being accountable for any loss which may be occasioned thereby.

to employ agents, &c.

(ii) Appoint, retain, employ such agents, bailiffs, stewards, receivers, clerks, accountants, or other persons to aid and assist them in the care and management of the said hereditaments and premises, or any part thereof, and in receiving and paying the rents, income, and produce thereof, or any part thereof, or other-

(*e*) See S. L. A. 1889, ss. 2 and 3. In the absence of an express power trustees could not grant a lease with an option of purchase: see *Oceanic, &c. Co.* v. *Sutherberry,* 16 Ch. D. 236. The time within which the option may be exercised must be limited to avoid a perpetuity: see *Worthing Corporation* v. *Heather,* [1906] 2 Ch. 532.

(*f*) The short form as in Precedent XVI., clause 4, *ante,* p. 407, may be used, if preferred, or the following sub-clause (i.) may be substituted for that in the text:—

"Exercise all the powers mentioned in sect. 42 of the Conveyancing Act, 1881, as amended by sect. 14 of the Conveyancing Act, 1911, with power also to open and work mines, quarries, and minerals, and to cut timber for any purpose."

wise in the performance and execution of the several trusts and purposes hereinbefore declared concerning the said premises, as to the trustees or trustee may seem best, with power to pay or allow to all such agents, bailiffs, stewards, receivers, clerks, accountants, and other persons so appointed, retained, and employed from time to time, such salary or salaries, allowances, or other compensation, as the trustees or trustee shall in their or his discretion think fit, and at the like discretion to dismiss any person so appointed, retained, or employed.

to determine questions;

(iii) Determine whether any and what part of the produce of timber, mines, minerals, quarries, or brickfields shall be treated as capital or income respectively; AND any part of such produce which shall be so determined to be of the nature of capital, shall be held and applied by the said trustees or trustee as if the same were moneys arising from a sale under the trust for sale hereinbefore contained.

to raise money for payment of charges, &c.

(iv) Raise from time to time, by mortgage, or by sale under the trust for sale hereinbefore contained, of all or any part of the said hereditaments, or otherwise, or out of any capital moneys for the time being in the hands of the trustees or trustee, such sum or sums of money as may be required for the payment of any gross sums charged on the said premises, or any part thereof, or for any improvements which the trustees or trustee shall consider to be of a permanent character, or for the payment of such gross sums as may be required for any purpose hereby or by statute directed or authorised, so that every such mortgage shall bear such interest and contain such powers and provisions as may be agreed upon, and so that no mortgagee lending money on such a mortgage shall be concerned to see that such money is wanted or to see to the application thereof.

Power for trustees to allow *cestuis que trusts* to receive rents, &c.

10. The trustees or trustee may, from time to time, during such period or periods, and upon such terms or conditions as they or he shall think fit, authorise and permit the husband or the wife, or any other person or persons interested in or under the said indenture of even date herewith, to receive the rents and profits, and to exercise all the powers of management hereinbefore given to the trustees or trustee, without being accountable for any loss that may be occasioned thereby.

11. The statutory power of appointing a new trustee or new

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trustees hereof shall be vested in the husband and wife during their joint lives, and in the survivor of them during his or her life.

Indemnity and reimbursement of trustees in respect of leaseholds.

12. PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees or trustee shall not be responsible for the payment of any rents or in respect of the performance or observance of any covenants or conditions reserved by or contained in the said leases mentioned in the third schedule hereto, or any of them, or for or in respect of any damage, loss, costs, or expenses which may be caused or incurred by or by reason of the non-payment of any such rents, or the non-performance or non-observance of any of such covenants and conditions; AND that the trustees or trustee, and each of them, are entitled out of the trust estate to be reimbursed and indemnified in the fullest manner out of the trust against all costs, damages, losses, and expenses paid or incurred by them or him in respect of the said leasehold premises hereby assigned.

13. [*Clause restricting implied covenant for further assurance if necessary, Precedent XVI., clause* 9, *p.* 409.]

14. [*Provision as to increment value and reversion duties, Precedent XVI., clause* 6, *p.* 408.]

15. [*Powers as to land duties, Precedent XVI., clause* 7, p. 408.]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

XVIII. SURRENDER *by* HUSBAND *of* COPYHOLDS, *pursuant to a* COVENANT *in his* MARRIAGE SETTLEMENT, *to the* USE *of the* TRUSTEES *of the* SETTLEMENT (*g*).

Recital of conveyance on trust for sale, or settlement.

Manor of —— in the County of ——.

WHEREAS, by an indenture dated the - - - day of ——, 19—, and made between [*husband*], of, &c., of the first part, [*wife*], now the

Surrenders, by whom prepared.

(*g*) This precedent is here inserted both for purposes of reference and also in case the settlor's solicitor should be called on to prepare such an instrument. This is, however, very seldom the case, as surrenders are generally prepared by the steward of the manor, and a custom that a

wife of the said [*husband*], but therein called and described as *name*], of, &c., spinster, of the second part, and [*trustees*], of the third part (being a conveyance in trust for sale of the lands and hereditaments therein particularly described [*or*, a settlement], made in consideration of the marriage then intended, and shortly afterwards solemnized between the said [*husband*] and [*wife*], his wife), it was witnessed that in consideration of the said then intended marriage the said [*husband*] thereby [granted unto the said [*trustees*] and their heirs all and singular the freehold messuages, lands, tenements and hereditaments therein particularly described, To HOLD the same unto the said [*trustees*], their heirs and assigns, upon the trusts, and with and subject to the powers and provisions in the said indenture limited and declared concerning the same freehold premises; AND by the same indenture it was also witnessed that the said [*husband*] thereby] covenanted with the said [*trustees*] that he would, after the solemnization of the said then intended marriage, duly surrender, according to the custom of the said manor, the copyhold or customary hereditaments therein and hereinafter described, with their appurtenances to the use of the said [*trustees*], their heirs and assigns, for ever, upon the trusts, and with and subject to the powers and provisions therein declared and contained concerning the same [*or*, upon and for such trusts, intents and purposes as would as near as might be correspond to the uses and trusts thereby and therein limited, declared and contained concerning the said freehold hereditaments and premises thereby assured]: NOW BE IT REMEMBERED that, on Surrender. the —— day of ——, 19—, the said [*husband*] came before [*steward*], of, &c., steward of the said manor, and in performance of the said covenant contained in the said indenture of settlement, did out of court surrender into the hands of the lord of the said manor by the rod, by the hands and acceptance of the said steward according to the custom of the said manor: ALL THAT copyhold [*describe parcels*], with the appurtenances to the same premises belonging or in anywise appertaining, to which hereditaments

steward shall prepare all surrenders and charge a reasonable fee therefor, is good: *R.* v. *Rigge*, 2 B. & Al. 550; *R.* v. *Bishopstoke*, 8 Dow, P. C. 608. These instruments follow the form prescribed by the usage of the particular manor, and accordingly vary somewhat in phraseology.

Stamp, 10*s*.

XVIII. SURRENDER OF COPYHOLDS.

and premises the said [*husband*] was admitted at a court held for the said manor on the —— day of ——, 19—: To the use of the said [*trustees*], their heirs and assigns, for ever, according to the custom of the said manor, by the rents and services therefor due and of right accustomed, but upon the trusts, and with and subject to the powers and provisions, upon, with, and subject to which the same copyhold or customary hereditaments and premises were by the hereinbefore recited indenture covenanted to be surrendered.

IN WITNESS, &c.

XIX. DECLARATION *of* TRUSTS *of* MONEY *to arise from the* SALE *of* FREEHOLDS *conveyed by* DEED *of even* DATE *for the* BENEFIT *of the* INTENDED HUSBAND *and* WIFE *and the* ISSUE *of the* MARRIAGE. COVENANT *to* SETTLE AFTER-ACQUIRED PROPERTY *of the* WIFE.

Parties.

THIS INDENTURE (*h*), made the —— day of ——, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

Recitals: of intended marriage; of conveyance of lands in trust for sale;

AND WHEREAS, in pursuance and part-performance of an agreement entered into upon the treaty for the said intended marriage, the husband has by an indenture bearing even date with, but executed before the execution of these presents, and made between the same parties as are parties hereto, assured and conveyed certain freehold lands and hereditaments situate in the parish of ——, in the county of ——, and therein particularly described, to the use of the husband, his heirs and assigns, until the said intended marriage, and thereafter to the use of the said [*trustees*], their heirs and assigns, upon trust to sell the same as therein mentioned, and to stand possessed, from and after such sale, of the net moneys to arise therefrom, and [from and after the death of the survivor of them the husband and wife], of the rents and profits of the said hereditaments until the same should be sold, upon such trusts and subject to such powers and provisions as should be declared and

(*h*) Stamp, see *ante*, p. 405, note (*q*).

contained concerning the same respectively by and in an indenture of even date therewith therein referred to, being these presents.

AND WHEREAS upon the treaty for the said intended marriage it was agreed that these presents should contain a covenant for settling any property of or to which the wife may be or become entitled at the time of such marriage or during the said intended coverture, except as hereinafter mentioned.

of agreement for settlement of wife's after-acquired property.

NOW THIS INDENTURE WITNESSETH that, in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Declaration of trusts of proceeds of sale of lands:

1. The said [*trustees*], their executors, administrators, and assigns, shall stand possessed of the net moneys to arise from the sale under the trust for sale contained in the hereinbefore recited indenture of even date herewith of the said lands and hereditaments thereby assured, or any part thereof, upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, with the consent in writing of the husband and wife during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the same net moneys, as and when the same shall be received, in the names or name of the trustees or trustee in or upon any of the stocks, funds, shares, or securities hereinafter authorised, and may from time to time, with such consent or at such discretion as aforesaid, vary or transpose any of the said investments into others of any nature hereby authorised.

trust for investment;

2. The trustees or trustee shall pay the income of the said trust moneys and the investments from time to time representing the same (hereinafter called "the trust premises") unto the husband during his life; AND after his death to the wife, if she shall survive him during her life, without power of anticipation.

trusts of income for husband for life, remainder for wife for life;

3. From and after the death of the survivor of them the husband and wife, the trustees or trustee shall stand possessed of the trust premises, and the income thereof, in trust, &c. [*usual trusts in favour of issue*, ut ante, *Precedent I., clause* 4, *p.* 346, *substituting* "the trust premises" *for* "the wife's fund"].

trusts in favour of issue;

XIX. DECLARATION OF TRUSTS OF PROCEEDS OF SALE OF FREEHOLDS.

4. [*Hotchpot clause, Precedent I., clause* 5, *p.* 347.]

5. [*Maintenance and accumulation clause, if desired, Precedent I., clause* 6, *p.* 347.]

6. [*Advancement clause, Precedent I., clause* 7, *p.* 348.]

ultimate trust in default of children for husband absolutely.

7. If there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the trust premises and the income thereof, or so much thereof respectively as shall not have been paid or applied under any such trusts or powers, in trust for the husband absolutely.

Declaration of trusts of rents and profits till sale.

8. PROVIDED ALWAYS, that the trustees or trustee shall [from and after the death of the survivor of them, the husband and wife] (*i*) pay and apply the net rents and profits of the said lands and hereditaments assured by the said indenture of even date herewith until sale thereof, or of the part or parts thereof for the time being remaining unsold, to the person or persons, upon the trusts, and for the purposes, to, upon, and for whom, or which, the income of the investments hereinbefore directed to be made of the net moneys to arise from the sale thereof would have been payable or applicable if such sale and investment had actually been made.

Covenant to settle wife's after-acquired property.

9. The wife hereby covenants, &c. [*continue covenant for settlement of after-acquired property, Precedent I., clause* 9, *p.* 349, *substituting* "the trust premises" *for* "the wife's fund"].

Proviso as to income of after-acquired property.

10. PROVIDED ALWAYS that the wife shall take the first life interest, without power of anticipation, in the income of any property which shall become vested in the trustees or trustee under or by virtue of the covenant for settlement thereof hereinbefore contained, and that after her death the husband, if he shall survive her, shall be entitled to such income during his life, and that if there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested

(*i*) The words in brackets will be inserted where the trusts of the rents and profits during the lives of the husband and wife and the life of the survivor are declared by the conveyance of even date: see *ante*, p. 406, clause 3; and see *ibid.* note (*t*).

in the trustees or trustee, the trustees or trustee shall stand possessed of any property which shall have become vested in them under or by virtue of such covenant, in trust, &c. [*ultimate trusts in favour of wife*, ut ante, *Precedent I., clause* 8, *p.* 348].

XIX. DECLARATION OF TRUSTS OF PROCEEDS OF SALE OF FREEHOLDS.

Ultimate trusts of after-acquired property.

11. The trustees or trustee may, with such consent or at such discretion as aforesaid, raise by sale of all or any part of the trust premises, and advance to the trustees of the said indenture of even date herewith any moneys required by them for paying off any moneys secured or duties leviable in respect of the hereditaments by the said indenture assured, or for making any payments thereby or by statute directed or authorised. Any moneys so advanced to be repaid with interest at the rate of 4 per cent. per annum, and until payment to be charged on the hereditaments for the time being, subject to the trusts of the said last mentioned indenture; And the said trustees or trustee advancing money under this power shall not be bound to inquire as to how much or if any money is required for the purposes aforesaid, or as to the application of the money advanced.

Power to raise moneys and advance the same to trustees of indenture of even date.

12 to 17. [*Investment clauses, Precedent I., clauses* 16 *to* 21, ante, *pp.* 355 et seq.]

18. [*Power to invest in the purchase of lands, Precedent V., clauses* 17 *to* 20, ante, *pp.* 372, 373.]

19. [*Power to appoint new trustees, Precedent I., clause* 23, *p.* 358.]

20. [*Power to employ agents and make charges, Precedent I., clause* 24, *p.* 359.]

In witness, &c.

XX. SETTLEMENT *on* Marriage *of* Registered Land *on* Trust *for* Sale. Declaration *of* Trust *of* Proceeds *of* Sale.

THIS INDENTURE (*k*), made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

(*k*) Stamp, *ad valorem* at 5*s.* per 100*l.* or portion of 100*l.* of the value of the land settled. The stamp should be adjudicated.

XX. SETTLEMENT ON MARRIAGE.

Recitals of intended marriage.

Seisin of husband and agreement to settle.

Intended transfer to and registration of trustees.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

AND WHEREAS the husband is seised for an estate in fee simple in possession free from incumbrances of the hereditaments hereby assured, of which he is registered as proprietor with a —— title under the Land Transfer Acts, 1875 and 1897, and upon the treaty for the said marriage it was agreed that the said hereditaments should be settled in manner hereinafter appearing.

AND WHEREAS an instrument of transfer to the said [*trustees*] of the said hereditaments ready for registration, under the said Acts, has been prepared and is intended to be forthwith executed; AND it is also intended that the said [*trustees*] shall be forthwith registered as proprietors of the said hereditaments (*l*).

NOW THIS INDENTURE WITNESSETH and it is hereby agreed and declared as follows:—

Grant.

1. In pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the husband, with the approbation of the wife, hereby as settlor grants unto the said [*trustees*], ALL THOSE lands registered under the Land Transfer Acts, 1875 and 1897, under the heading District ——. Parish ——, No. of Title ——, TO HOLD unto the said [*trustees*], and their heirs, to the use of the husband and his heirs until the said intended marriage and after the solemnization thereof, to the use of the said [*trustees*], and their heirs, upon the trusts, and subject to the powers and provisions hereinafter contained concerning the same.

Covenant by the husband to execute transfer.

2. The husband hereby covenants with the said [*trustees*] that he will forthwith execute such instrument of transfer as aforesaid.

Covenant by trustees to apply for registration and enter restriction.

3. The said [*trustees*] hereby covenant with the husband and wife that they, the said [*trustees*] will forthwith, after such transfer is executed as aforesaid, apply for registration of themselves as proprietors of the said hereditaments, and for the entry of a restriction against the said Title No. ——, that no disposition shall be registered without the consent of the husband and wife (*m*).

Declaration of uses, &c.

4. Upon such registration as aforesaid the said hereditaments

(*l*) Where registered land is conveyed to trustees upon trust for sale, the trustees, not the tenant for life, are registered as proprietors.

(*m*) See L. T. R. first schedule, Form 8.

shall go, remain, and stand limited to the uses, upon the trusts, and subject to the powers and provisions to, upon, and subject to which the same would but for such registration have been held by virtue of these presents.

Trust for sale.

5. After the solemnization of the said intended marriage, the said [*trustees*], their heirs and assigns, shall stand seised of the said hereditaments hereby granted upon trust, that they, the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, at the request in writing of the husband and wife, or the survivor of them, during their, his, or her lifetime, and after the death of such survivor, at the discretion of the trustees or trustee, sell the said hereditaments or any part thereof.

Trusts of the proceeds of sale

6. The trustees or trustee shall, out of the moneys arising from any such sale, pay the costs incurred in respect thereof, or otherwise, in respect of the premises, and shall hold the residue of such moneys upon the trusts, and subject to the powers and provisions hereinafter declared and contained concerning the same, and shall pay and apply the net rents and profits of the said hereditaments until sale thereof respectively to the person or persons, and for the purposes to and for which the income of the investments hereinafter directed to be made of the net moneys to arise from the sale thereof would be payable or applicable under the trusts hereinafter contained if such sale and investment were actually made.

and of the rents, &c. until sale.

Trust for investment.

7. The trustees or trustee shall, with the consent in writing of the husband and wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the said net moneys to arise from such sale as aforesaid in or upon any of the stocks, funds, shares, or securities hereinafter authorised, with power from time to time, with such consent or at such discretion as aforesaid, to vary or transpose any such investments into or for others of any nature hereby authorised.

8. The trustees or trustee shall pay the income of the said trust moneys and the investments from time to time representing the same (hereinafter called "the trust premises"), unto the husband during his life, and after his death to the wife, if she shall survive him, during her life, without power of anticipation.

9. From and after the death of the survivor of the husband and wife [*continue usual trusts for issue as husband and wife, or*

XX. SETTLEMENT ON MARRIAGE.

survivor, shall appoint, Precedent I., clause 4, *p.* 346, *substituting* "trust premises" *for* "wife's fund"].

10. [*Hotchpot clause, Precedent I., clause* 5, *p.* 347.]

11. [*Advancement clause, Precedent I., clause* 7, *p.* 348.]

12. [*Ultimate trust for husband absolutely, Precedent XIX., clause* 7, *p.* 422.]

13 to 18. [*Investment clauses, Precedent I., pp.* 355 et seq.]

19. [*Power to purchase land, Precedent V., clause* 17, *p.* 372.]

20. While the said hereditaments hereby assured or any of them or any hereditaments purchased under the power in that behalf hereinbefore contained shall remain unsold, &c. [*continue power to manage, &c. until sale, Precedent XVI., clause* 4, *p.* 407].

21. [*Power to lease, Precedent XVI., clause* 5, *p.* 408, *saying,* "the said hereditaments hereby assured or any part thereof or any hereditaments so purchased as aforesaid."]

22. [*Provisions as to increment and reversion duties, Precedent XVI., clause* 6, *p.* 408, *saying as in last clause.*]

23. [*Powers as to land value duties, Precedent XVI., clause* 7, *p.* 408.]

24. The trustees or trustee may raise from time to time, &c. [*continue power for the trustees to raise money for payment of charges, &c., see Precedent XVII., sub-clause* (iv) *of clause* 9, *p.* 417].

25. [*Power to appoint new trustees, Precedent XVI., clause* 8, *p.* 409.]

26. [*Power to employ agents and to charge, Precedent I., clause* 24, *p.* 359.]

IN WITNESS, &c.

XXI. TRANSFER *of* MORTGAGE (*by* INDORSEMENT *on the* MORTGAGE DEED) *previously to* MARRIAGE, *upon* TRUSTS *which are* DECLARED *by a separate* DEED *of* SETTLEMENT.

Parties (*o*).

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*intended wife and mortgagee*], of, &c., of the first part; [*intended husband*], of, &c., of the second part; [*mortgagor*], of, &c., of the third part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part:

Recitals: of intended marriage:

WHEREAS a marriage is intended shortly to be

(*n*) Stamp, 6*d.* per 100*l.* or part of 100*l.* of the amount transferred.

(*o*) As to the advisability of obtaining the concurrence of the mortgagor, see *ante,* Mortgages, p. 140, note (*l*). If his concurrence cannot be obtained, this transfer must be modified accordingly.

solemnized between the said [*wife*] and the said [*husband*]; AND WHEREAS the within mentioned sum of £ —— is still due and owing to the said [*wife*] upon the security of the within written indenture, but all interest for the same has been paid up to the —— day of —— last, as the said [*mortgagor*] and [*wife, &c.*] do hereby respectively acknowledge; AND WHEREAS on the treaty for the said intended marriage it was agreed, amongst other things, that the said principal sum of £ – -, and all interest due and to become due thereon, and the securities for the same, should be transferred unto the said [*trustees*] in manner hereinafter mentioned, upon and for the trusts and purposes, and with and subject to the powers, agreements, and declarations hereinafter declared or referred to concerning the same: NOW THIS INDENTURE WITNESSETH as follows:—

XXI. TRANSFER OF MORTGAGE ON MARRIAGE.

that mortgage money is still owing:

agreement to settle.

First *testatum.*

1. In pursuance of the said agreement, and in consideration of the said intended marriage, the said [*wife, &c.*], with the approbation of the said [*husband*], and also with the privity of the said [*mortgagor*] (testified by their respective execution hereof), hereby, as settlor, assigns unto the said [*trustees*], ALL THAT the said principal sum of £—— secured by the within written indenture, and all interest due and to become due for the same sum, and the benefit of all securities for the same (*p*), TO HOLD the same unto the said [*trustees*] in trust for the said [*wife*] until the said intended marriage; AND after the solemnization thereof, upon such trusts, and with and subject to such powers, agreements, and declarations as are or shall be expressed or declared concerning the same in an indenture intended to bear even date herewith, and to be made between the said [*husband*], of the first part, the said [*wife, &c.*], of the second part, and the said [*trustees*], of the third part.

Assignment of mortgage moneys.

Habendum.

Trust for wife till marriage, then on trusts declared by deed of even date.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the said [*wife, &c.*], with the approbation and privity of the said [*husband*] and [*mortgagor*] respectively (testified as aforesaid), hereby, as settlor, grants unto the said [*trustees*], their heirs and assigns, ALL THOSE the within mentioned messuages, lands, tenements, or other hereditaments com-

Grant of lands comprised in security.

(*p*) No power of attorney is required, as the mortgagor is a party to the deed; nor is it required if he is not a party, provided that notice is given to him of the transfer: see the Judicature Act, 1873, s. 25 (6).

XXI. TRANSFER OF MORTGAGE ON MARRIAGE.

prised in or expressed to be granted and conveyed by the within written indenture, with their respective rights, easements, and appurtenances, To HOLD all the premises hereby granted unto and to the use of the said [*trustees*], their heirs and assigns, for ever, subject to the equity of redemption now subsisting therein under the within written indenture.

3. IT IS HEREBY AGREED that the statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and [*wife*] during their joint lives, and in the survivor of them during his or her life.

IN WITNESS, &c.

REAL SETTLEMENTS.

XXII. SETTLEMENT *on* MARRIAGE *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS *belonging to the* INTENDED HUSBAND; LIMITATION *of* RENTCHARGE *by way of* PIN-MONEY *to the* INTENDED WIFE; *and subject thereto* LIMITATION *of* LANDS *to the* USE *of the* HUSBAND *for* LIFE, *with remainder to the use that the* WIFE *may receive a* JOINTURE, *and subject thereto to* TRUSTEES *for* 500 *years to secure* PORTIONS *for younger* CHILDREN, *with remainder to the use of the* FIRST *and other* SONS *of the* MARRIAGE *successively in* TAIL MALE, *remainder to the* HUSBAND *in* FEE. TRUSTS *of* TERM *for securing* PORTIONS. POWERS *of* JOINTURING *and* CHARGING PORTIONS. TRUSTS *of* COPYHOLDS *to correspond with* USES *of* FREEHOLDS. TRUSTS *of* LEASEHOLDS *to correspond with* USES *of* FREEHOLDS. SETTLEMENT *of* CHATTELS *as* HEIRLOOMS (*q*).

Parties.

THIS INDENTURE (*r*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c.,

Settled Land Acts.

(*q*) As to the provisions of the Settled Land Acts in relation to settlements and to the powers of tenants for life and other limited owners thereunder, see Vol. I. pp. 309 *et seq.*; and K. & E. 10th ed. vol. 2, pp. 713 *et seq.*

(*r*) Stamp, 5*s.* for every 100*l.* or portion of 100*l.* of the value of the properties settled; but see *ante*, p. 343, note (*b*).

[*trustee*], of, &c., and [*trustee*], of, &c. (*s*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife; AND WHEREAS the husband is seised of the several messuages, lands, and hereditaments described in the first schedule hereto for an estate of inheritance in fee simple in possession, free from incumbrances; AND of the messuages, lands, and hereditaments described in the second schedule hereto for an estate of inheritance to him and his heirs according to the customs of the several manors of which the same are respectively held; AND is possessed of the several messuages, lands, and premises described in the third schedule hereto for the respective residues of the terms for which the same are respectively held under the several indentures of lease in the same schedule mentioned, subject to the respective rents, covenants, and conditions by and in the said indentures of lease reserved and contained; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said freehold, copyhold, and leasehold hereditaments and premises respectively should be assured and settled in manner hereinafter appearing.

XXII. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, COPYHOLDS, LEASEHOLDS, &C.

Recitals:

of intended marriage;

of husband's title to freeholds; and copyholds and leaseholds;

of agreement for settlement.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

1. The husband, as settlor, with the approbation of the wife, hereby grants unto the said [*trustees*], ALL THAT mansion known as —— Hall, together with the outbuildings, gardens, pleasure-grounds, park, and demesne, and other lands usually occupied

Grant of freehold parcels.

(*s*) It is no longer necessary, as was formerly the practice, to appoint separate trustees of the "portions" or other terms created by the settlement (the object of such separate trustees being to prevent merger of such terms into each other or into the fee limited to the general trustees), since by the Judicature Act, 1873, s. 25, sub-s. 4, there is no merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. It may, however, be convenient to have two separate sets of trustees, as in the next form, in order to keep investments separate and to avoid conflicting interests being held by the same trustees. It is advisable to appoint not less than three general trustees of a real settlement, as otherwise, by the death or retirement of one, the number is at once reduced below that required by the Settled Land Act, 1882, ss. 39 and 45, to receive notice of the intended exercise by a tenant for life of his powers, or to receive and give discharges for capital money arising under the Act.

XXII. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, COPYHOLDS, LEASEHOLDS, &c.

therewith; And all and singular the manors or reputed manors, messuages, and other buildings, farms, lands, and hereditaments, corporeal and incorporeal, described in the first schedule hereto; And also all other (if any) the freehold messuages, lands, tithe rentcharges and hereditaments of every description of the husband, situate in or arising out of the respective parishes of —— and ——, in the county of ——, To hold the premises hereinbefore expressed to be hereby granted unto the said [*trustees*] and their heirs, to the use of the husband, his heirs and assigns, until the said intended marriage, and after the solemnization thereof to the use that the wife shall during the now intended coverture receive by way of pin-money the yearly sum of £——, to be charged upon and issuing out of the hereditaments and premises hereby granted, to commence from the day of the solemnization of the said intended marriage, and to be considered as accruing from day to day, but to be paid without any deduction (*u*) by equal quarterly payments, on the usual quarter days, the first payment to be made on such of the said days as shall happen next after the said intended marriage, but so that she shall not have power to anticipate such yearly sum, or any part thereof; And subject thereto, to the use of the husband and his assigns during his life without impeachment of waste; With remainder to the use that the wife (if she shall survive the husband) shall thenceforth during her life receive the yearly rentcharge of £—— for her jointure, to be charged upon and issuing out of the said hereditaments and premises hereby granted, to commence from the day of the death of the husband, and to be considered as accruing from day to day, but to be paid without any deduction (*u*) by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first of such payments to be made on such of the said days as shall first happen after the death of the

Habendum.

To trustees to use of husband till marriage.

Limitation of rentcharge by way of pin-money.

Remainder to use of husband for life.

Remainder to use that wife shall receive a jointure.

(*u*) The words "without any deduction" will not make the rentcharge payable free of income tax, and it would seem that the limitation of a rentcharge by a deed of settlement on marriage cannot be made clear of income tax, as this would apparently be a void contract within sect. 103 of the stat. 5 & 6 Vict. c. 35: see *Floyer* v. *Bankes*, 9 Jur. (N. S.) 684; *Att.-Gen.* v. *Shield*, 3 H. & N. 834. As to the effect of these words, see *Re Parker Jervis*, [1898] 2 Ch. 643; *Re Maryon-Wilson*, [1900] 1 Ch. 565; *Re Coxwell*, [1910] 1 Ch. 63; *Earl of Egmont's Estate*, [1912] 1 Ch. 251; and see also Elph. Introd. 6th ed. 394.

husband, if the wife shall then be living; AND subject as aforesaid to the use of the said [*trustees*] for the term of 500 years from the death of the husband without impeachment of waste, upon the trusts, and with and subject to the powers and provisions hereinafter contained concerning the same; AND subject as aforesaid, to the use of the first and other sons of the husband by the wife successively according to seniority in tail male; With remainder to the use of the first and other sons of the husband by the wife successively according to seniority in tail; With remainder to the use of all the daughters of the husband by the wife in equal shares as tenants in common in tail; With cross-remainders between such daughters as to their original and accruing shares as tenants in common in tail: AND if there shall be but one such daughter, then, as to the entirety of the same premises, to the use of such one daughter in tail; With remainder to the use of the husband, his heirs and assigns.

XXII. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, COPYHOLDS, LEASEHOLDS, &C.

Remainder to use of trustees for 500 years.

Remainder to use of first and other sons of the marriage in tail male.

Remainder to use of first and other sons in tail general.

Remainder to use of daughters as tenants in common in tail general with cross remainders (*y*).

Remainder to use of husband in fee.

Trust of term of 500 years for raising portions.

2. The said hereditaments hereby granted are hereby limited to the use of the said [*trustees*], their executors, administrators, and assigns, for the said term of 500 years upon the trusts, and with and subject to the powers and provisions following, that is to say—

(1) If there shall be any younger child or children of the said intended marriage (that is to say, any child or children other than an eldest or only son, or any other son or sons, who, before his or their respectively attaining the age of twenty-one years, shall [or any daughter or daughters, who, before her or their attaining that age or marrying, shall] become, or, if of full age, would be indefeasibly, entitled either in possession or remainder to the said hereditaments for the first estate in tail [male], who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry), then the said [*trustees*] and the survivors or survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called

(*y*) If desired, the limitation may be to the daughters successively, as follows:—

"To the use of the first and every other daughter of the husband by the wife successively in remainder one after the other according to their respective seniorities in tail male [*or*, in tail], with remainder to the use of the husband, his heirs and assigns."

XXII. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, COPYHOLDS, LEASEHOLDS, &c.

"the trustees"), shall after the death of the husband, or in his lifetime with his consent in writing, by mortgage of the premises comprised in the said term of 500 years, or any part thereof, for all or any part of the same term, or by or out of the rents and profits of the same premises, or any part thereof, or by sale of any timber or minerals, or by all or any of such means, or by any other reasonable means, raise for the portion or portions of such younger child or children as aforesaid such sum of money [free from death duties] as is hereinafter mentioned (that is to say), if there shall be but one such younger child the sum of £——; And if there shall be but two such younger children the sum of £——; And if there shall be three or more such younger children the sum of £——; and shall hold the said sum of £——, £——, or £——, as the event shall happen, in trust for all or such one or more exclusively of the other or others of the said younger children (*z*), if more than one in such shares, and with such future, executory, or other trusts for the benefit of any such child or children (*a*), upon such conditions, and generally in such manner as the husband shall, by any deed or deeds, revocable or irrevocable, or by will or codicil appoint; And in default of such appointment, and so far as no such appointment shall extend, in trust for such younger child or children, if more than one, in equal shares.

Hotchpot clause.

(2) In default of appointment to the contrary, no child who (*b*) shall take any part of the said sum of £——, or £—— (as the case may be) under or by virtue of an appointment made under the power hereinbefore contained, shall be entitled to participate in the unappointed part of the same sum without bringing the part appointed to him or her (*c*) into hotchpot and accounting for the same accordingly.

Trusts for maintenance.

(3) The trustees shall, after the death of the husband, by any such means as aforesaid, raise for the maintenance and education

(*z*) If desired, this provision may be extended to remoter issue, thus:—"or the issue of any such child or children, such issue to be born and take vested interests within twenty-one years after the death of the husband."

(*a*) "Or remoter issue."

(*b*) "Or whose issue."

(*c*) "Or to his or her issue."

of the said younger child or children (*d*), such yearly sum or sums (not exceeding what the interest of the then expectant or presumptive portion or portions intended to be hereby provided for such child or children (*d*) would amount to at the rate of 4 per cent. per annum) as the husband shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, and in default of appointment and so far as no such appointment shall extend as the trustees shall think fit, and shall apply the yearly sum or sums so raised accordingly; AND the trustees may either themselves so pay and apply the same, or may pay the same to the guardian or guardians of such child (*d*) for the purposes aforesaid, without seeing to the application thereof.

Trust for advancement of younger children.

(4) The trustees may, at any time or times after the death of the husband, or in his lifetime with his consent in writing, raise by the means aforesaid, or any of them, for the advancement of any such younger child or children (*d*), any sum or sums of money not exceeding in the whole for any such child or children (*d*) one moiety of his, her, or their then expectant or presumptive or vested portion or portions, whether under any appointment or in default of appointment; and which sum or sums shall be considered as part of the portion or portions provided for such younger child or children (*d*), and shall pay and apply the same for his, her, or their preferment and advancement or benefit in such manner as the husband shall direct, and in default of and subject to such direction as the trustees shall in their or his discretion think fit.

Power for the husband to require portions to be raised in his lifetime.

(5) The husband may by deed require the trustees, at any time or times, to raise, by the ways and means aforesaid, the whole or any part or parts of the portion or portions to which, by appointment or otherwise, any child or children (*d*) of the intended marriage shall for the time being be entitled for a vested interest or vested interests, and to pay such portion or portions, or the part or parts thereof required to be raised as aforesaid, to the child or children (*d*) entitled thereto, or to any person or persons claiming through or in right of him, her, or them; and the trustees shall in all respects comply with every such request, and every such deed shall, if there shall be two or more younger children (*d*) of the intended marriage, and if it shall in other

(*d*) "Or remoter issue."

XXII. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, COPYHOLDS, LEASEHOLDS, &c.

respects be necessary, operate as an execution of the power of appointment between or among such children (*e*) hereinbefore contained.

Power for trustees to create specific securities.

(6) In case of the husband so as aforesaid requiring the whole or any part or parts of any portion or portions to be raised, the trustees may, instead of actually raising the same, assign or demise the premises, or any part or parts thereof, to the person or persons to whom the same shall be directed to be paid, or as he, she, or they shall direct, by way of mortgage for securing the sum or sums required to be raised, with interest for the same at such rate as shall be in such assignment or demise mentioned.

The husband to keep down the interest on portions raised in his lifetime.

(7) In case of the husband so as aforesaid requiring the whole or any part or parts of any portion or portions to be raised during his lifetime, then and in every such case the husband shall, as between himself and the persons entitled in remainder (but without prejudice to the rights of the mortgagee or mortgagees) be bound to keep down the interest accruing during his life upon any money so raised in his lifetime.

Surplus rents to be taken by reversioner.

(8) Subject to the trusts hereinbefore declared, and to the right of the trustees by the ways and means aforesaid, to raise and reimburse themselves all costs and expenses incurred in relation to the trusts aforesaid, the rents and profits of the premises comprised in the term of 500 years, or so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid, shall be received by the person or persons for the time being entitled to the same premises in reversion expectant upon the same term.

Power to husband to jointure any future wife (*f*).

3. It shall be lawful for the husband if he shall marry again, by deed revocable or irrevocable, or by will or codicil, to appoint to any after-taken wife who may survive him, for her life, or for any less period by way of jointure, any yearly rentcharge or

(*e*) "Or remoter issue."

(*f*) There is now no necessity to give expressly to the donee of a power to create a rentcharge any authority to confer powers of distress or entry, or to limit a term for securing the rentcharge: see sect. 44 of the Conveyancing Act, 1881.

yearly rentcharges, not exceeding in the whole the yearly sum of £——, either subject to or free from death duties, to be charged upon all or any of the said hereditaments and premises hereby granted and to be paid at such times and in such manner as he shall direct; and this power of jointuring may be exercised as often as the husband shall marry.

Power to charge estates with portions for children of a subsequent marriage (*g*).

4. It shall be lawful for the husband if he shall marry again at any time or times, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the said hereditaments and premises hereby settled with the payment of such sum or sums of money as he shall think fit, not exceeding in the whole in the several events hereinafter specified the several sums hereinafter mentioned, as and for the portion or portions of every or any child or children of his by any such after-taken wife who being a son or sons shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, that is to say, if there shall be only one such child the sum of £——, and if there shall be only two such children the sum of £——, and if there shall be three or more such children the sum of £——, such portion or portions to be an interest or interests vested in and to be paid to or divided between or among such child or children, or any one or more of them, at such age or time, or respective ages or times (not previous as to a son to his attaining the age of twenty-one years, or as to a daughter to her attaining that age or marrying), and with such provisions for maintenance and advancement in the meantime, and, if more than one in such shares and proportions and with such conditions, restrictions, and limitations over, for the benefit of one or more such child or children respectively and in such manner as the husband shall in the instruments creating the charge direct: AND by the same or any other deed, or by will or codicil, to charge the hereditaments charged with such portion or portions respectively with the payment of such yearly sum or sums of money as he shall think fit, for or towards the maintenance and education of the child or children presumptively entitled to any portion or portions under the power of charging the same lastly hereinbefore contained, until his, her, or their portion or respective

Power to charge yearly sums for maintenance, &c. of such children;

(*g*) If desired, this power may be extended so as to include remoter issue: see *ante*, p. 432, notes.

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portions shall become vested and payable, but so that the same shall not exceed the interest of his, her, or their portion or respective portions or presumptive or expectant portion or respective portions after the rate of 4 per centum per annum; AND ALSO by the same or any other deed, or by will, or codicil, to charge all or any of the hereditaments and premises hereby settled with any sum or sums of money, not exceeding in the whole for any such child or children by any such after-taken wife as aforesaid one moiety of his, her, or their then expectant or presumptive portion or portions, and which sum or sums shall be considered as part of the portion or portions provided for such child or children, to be raised for the advancement or benefit of such child or children and to be applied for that purpose in such manner as the husband shall direct, and in default of such direction, as the trustees shall in their discretion think fit; AND by the same or any other deed, or by will or codicil, to appoint for any term or terms of years, to any person or persons with or without impeachment of waste, the said hereditaments so to be charged as aforesaid upon the usual trusts, for securing, raising, and paying such portion or respective portions, and the costs of and incident to raising the same and the execution of the trusts thereof.

to charge gross sums for advancement of such children;

to limit terms for securing portions.

Proviso as to destination of accumulations of rents and profits.

5. If any person who would, if of full age, be entitled to the possession or receipt of the rents and profits of the said hereditaments and premises hereby granted as tenant for life, or in tail male, or in tail by purchase, shall die under the age of twenty-one years, then the trustees shall stand possessed of the rents and profits of the same hereditaments received by them during the minority of the person so dying, and all accumulations and investments thereof, or so much thereof as shall not have been applied under any statutory power, and invest and apply the same as if the same were capital moneys arising under the Settled Land Acts, 1882 to 1890, from the same premises, but (*h*) liable ultimately to be laid out in the purchase of real estate to be assured and settled to the uses, upon the trusts, and with and subject to the

(*h*) These words are inserted to obviate any doubt as to whether a mere direction that the moneys shall be held and applied as capital money arising under the Act would operate as an effectual conversion into land, so as to prevent the moneys from vesting absolutely in the first tenant in tail who attains twenty-one years: *Re Walker*, [1908] 2 Ch. 705; Wolst.

powers and provisions hereinbefore limited and declared concerning the said hereditaments and premises hereby granted, but not so as to increase or multiply charges or powers of charging.

6. For the consideration aforesaid, the husband, as settlor, with the approbation of the wife, hereby covenants with the said [*trustees*] that, in case the marriage shall be solemnized, he will forthwith, at his own cost, surrender into the hands of the lord of the manor of —— [respective manors of —— and ——], in the county of ——, ALL THOSE copyhold messuages and other buildings, farms, lands, and hereditaments described in the second schedule hereto, and all other, if any, the copyhold hereditaments of every description of the husband situate in the respective parishes of —— and —— aforesaid, to the use of the said [*trustees*], and their heirs, according to the custom of the said manor [respective manors], at and under the customary fines, rents, suits, and services, upon such trusts, and with, under, and subject to such powers and provisions as shall as nearly correspond with the uses, trusts, powers, and provisions hereinbefore limited, concerning the said hereditaments and premises hereby granted, as the different tenure of the estates will permit, but not so as to increase or multiply charges or powers of charging; AND that until the same premises shall be surrendered in pursuance of this covenant, he the husband will stand seised of the same premises in trust for the said [*trustees*] and their heirs, upon such trusts, and with and subject to such powers and provisions as the same would be subject to if the same had been so surrendered as aforesaid.

Covenant to surrender copyholds;

on trusts to correspond with uses of freeholds.

Declaration of trusts of copyholds till surrender.

7. In further pursuance of the said agreement, and for the consideration aforesaid, the husband, with the approbation of the wife, hereby as settlor assigns unto the said [*trustees*] ALL and singular the messuages, lands, and premises described in the third schedule hereto, and all and singular other the premises comprised in or expressed to be demised by the respective indentures of lease in the same schedule mentioned, TO HOLD unto the said [*trustees*] henceforth for the several residues now unexpired of

Assignment of leaseholds.

Habendum: to trustees;

C. & S. L. Acts, 10th ed. p. 413. As to the investment and application of capital money, see S. L. A. 1882, ss. 21 to 23; S. L. A. 1887; S. L. A. 1890, ss. 13 and 15; Housing of the Working Classes Act, 1890, s. 74, as amended by Housing and Town Planning Act, 1909, s. 7; Finance Act, 1894, s. 9 (7); Agricultural Holdings Act, 1908, s. 20; K. & E. 10th ed. pp. 772 *et seq.*

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upon trust to pay rents, &c.; and subject thereto upon trusts corresponding to uses of settled freeholds.

the respective terms granted by, and at and under the rent, covenants, and conditions reserved and contained by and in the said respective indentures of lease, upon trust out of the rents and profits of the premises hereby assigned to pay the rent and observe and perform the covenants and conditions by and in the said respective leases reserved and contained, and on the part of the lessee to be paid, observed, and performed: AND, subject thereto, upon such trusts, and with and subject to such powers and provisions as shall as nearly correspond with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the hereditaments hereinbefore expressed to be hereby granted, as the different nature of the premises will permit, but not so as to increase or multiply charges or powers of charging: PROVIDED ALWAYS, &c. [*trustees' indemnity and reimbursement*, ut ante, *p.* 418, *clause* 12, mutatis mutandis].

Assignment of jewels, plate, &c.

8. For the consideration aforesaid, the husband, as settlor, hereby assigns unto the said [*trustees*], ALL and singular the jewels, plate, furniture, pictures, statues, and other works of art, books, and other articles of domestic use and ornament now in or about —— Hall, aforesaid, TO HOLD the same unto the said [*trustees*] upon trust to permit the same to be held and enjoyed as heirlooms (*i*) by the person or persons for the time being entitled to the hereditaments hereby settled under the uses and limitations hereinbefore declared as nearly as the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging.

Habendum.

To trustees upon trust as heirlooms.

Restriction of absolute vesting of heirlooms and leaseholds in certain events.

9. PROVIDED ALWAYS, that neither the said heirlooms nor the said leasehold premises hereinbefore assigned shall vest absolutely in any person hereby made tenant in tail male or in tail by purchase of the hereditaments hereby settled, who dies before he or she attains the age of twenty-one years, or before he or she becomes entitled in actual possession to the same hereditaments or the receipt of the rents and profits thereof, or would be so entitled but for the trusts of any terms created hereby, or under

(*i*) As to the power of a tenant for life to sell heirlooms, see Settled Land Act, 1882, s. 37; and see *Re Hope*, [1899] 2 Ch. 679; *Re Hope's S. E.*, 26 T. L. R. 413; *Re Sebright*, 56 Sol. J. 240; and see note on this section, Wolst. 10th ed. pp. 436 *et seq.*

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any statute, or who dies before the expiration of twenty-one years from the determination of all estates for life preceding his or her estate in tail male or in tail, without in either of the two last mentioned cases having become entitled in possession or remainder in fee simple by virtue of a disentailing assurance or otherwise, but on the death of such person before attaining an absolutely vested interest in the said heirlooms and leasehold premises respectively, the same shall devolve in the same manner as if they had been freehold of inheritance and included in the uses and limitations hereinbefore declared of the hereby settled hereditaments: PROVIDED ALWAYS, that as soon as conveniently may be, after the execution of these presents, an inventory shall be taken of the jewels, plate, and other articles hereinbefore assigned as heirlooms, and such inventory (to be revised as occasion shall require) shall be signed by the person for the time being entitled to the use of the heirlooms and also by the trustees: PROVIDED ALSO, that the said heirlooms shall at all times be kept in good preservation, and adequately insured against loss or damage by fire by the person for the time being entitled to the enjoyment thereof, but it is hereby expressly agreed and declared that the trustees shall not be bound to see to the preservation or insurance of the said heirlooms, or be responsible for any loss or injury which may happen thereto, but shall not be precluded from interfering for the protection thereof when and if he or they shall think fit.

An inventory to be taken of the heirlooms.

Heirlooms to be kept in good order and insured.

10. No purchaser or mortgagee paying money on a sale or mortgage purporting to be made under any trust or power herein contained, or under any statutory power, shall be concerned to see that such money is required, or that no more than is required is raised, or as to the application thereof.

Protection of purchasers and mortgagees.

11. The trustees shall be the trustees or trustee of the settlement hereby created and of every compound settlement consisting of these presents, and of any instrument or instruments to be executed hereafter (*k*), for all the purposes of the Settled Land

Appointment of trustees for purposes of Settled Land Acts, and of Conveyancing, &c. Act, 1881, s. 42.

(*k*) The following clause should be inserted in any resettlement of the settled properties:—

"The trustees or trustee for the time being of the settlement created by the recited indenture of the —— day of ——, for the

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Acts, 1882 to 1890, and also for the purposes of sect. 42 of the Conveyancing Act, 1881, and for all other purposes of the Conveyancing Acts, 1881 to 1911; AND a sole trustee (*l*) for the time being shall be competent to act for all the purposes of the said Acts, including the receipt of capital money and notices thereunder.

Power to appoint new trustees.

12. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in the husband during his life, and after his death in the person, if of full age, and otherwise competent, for the time being seised of or entitled in possession to the said hereditaments or the receipt of the rents and profits thereof, and if there shall be no such person, then by the person or persons in whom such power is vested by statute.

References to C. Acts and S. L. Acts.

13. Every reference herein to the Conveyancing Acts, 1881 to 1911, or the Settled Land Acts, 1882 to 1890, or any of such Acts, shall be deemed to extend to and include any Act extending, amending, or re-enacting the same respectively, but not so as to abridge or restrict any powers hereby conferred with reference thereto.

14. [*Trustees' power to employ agents and make charges, see* ante, *p.* 359.]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.
[*Freeholds.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.
[*Copyholds.*]

THE THIRD SCHEDULE ABOVE REFERRED TO.
[*Leaseholds.*]

purposes of the Settled Land Acts, 1882 to 1890, shall be trustees or trustee for the like purposes of the compound settlement formed by the said indenture, and any other instrument now or hereafter to be executed, including these presents."

(*l*) A tenant for life may be sole trustee: *Re Johnson,* [1913] W. N. 222.

XXIII. RESETTLEMENT. XXIII. RESETTLEMENT *of* FREEHOLDS *by a* FATHER *and* ELDEST SON *on the* MARRIAGE *of the latter.* LIMITATION *of a* RENTCHARGE *to the intended* HUSBAND, *and of* JOINTURE RENTCHARGES *to the intended* WIFE. *Subject thereto to the* FATHER *for* LIFE, *remainder to the intended* HUSBAND *for* LIFE, *remainder* (*subject to a term for securing* PORTIONS) *to his* FIRST *and other* SONS *in* TAIL MALE, *with remainders comprising* LIMITATIONS *to the* HUSBAND'S *younger* BROTHERS *for* LIFE *and their respective* ISSUE *in* TAIL MALE; *with similar* LIMITATIONS *in* TAIL. NAME *and* ARMS CLAUSE. SHIFTING CLAUSE *carrying over* SETTLED LANDS *on* ACCESSION *to* TITLE *and* FAMILY ESTATES. POWERS *of* JOINTURING *and* CHARGING PORTIONS. APPOINTMENT *of* MONEYS, *&c. to follow* USES *of* FREEHOLDS. XXIII. RESETTLEMENT WITH LIMITATIONS TO COLLATERALS.

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*father of intended husband*], of, &c., of the first part; [*intended husband*], of, &c. (hereinafter called "the husband"), of the second part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the third part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife; AND WHEREAS by an indenture dated, &c., and made between [*parties*] (being a settlement made in consideration of the marriage then intended, and afterwards solemnized between the said [*father*] and [*mother*], who, being the father and mother of the husband, are hereinafter called "the father" and "the mother" respectively), the manors, lands, tithe rentcharges, and hereditaments described in the schedule thereto were granted and conveyed unto the said [*grantees*] and their heirs, to the use of the father, his heirs and assigns, until the solemnization of the then intended marriage, and thereafter to the use of [*trustees of term for securing pin-money*] for the term of 99 years, upon the usual trusts for securing the yearly sum of £—— by way of pin-money for the mother, with remainder to the use of the father and his assigns for his life without impeachment of waste, with remainder to the use that the mother (if she should survive the

Parties.

Recitals: settlement on marriage of husband's parents;

(*m*) Stamp, *ad valorem* duty (5*s.* per 100*l.*) on the value of the lands, moneys, &c. to be settled; but see *ante*, p. 343, note (*b*).

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father) should out of the same premises receive for her life a yearly rentcharge of £——, with the usual powers of distress and entry and other remedies for recovering payment of the rentcharge when in arrear, and, subject as aforesaid, to the use of [*trustees of term for securing rentcharge*], their executors, administrators, and assigns, for the term of 200 years, upon the trusts in the same indenture mentioned for securing the payment of the rentcharge; and, subject as aforesaid, to the use of [*trustees of portions*], for the term of 1,000 years, upon the trusts in the same indenture mentioned for raising for the portion or portions of the child or children of the father by the mother (other than an eldest or only son), if there should be but one such child, the sum of £——; and if there should be more than one such child, the sum of £——, with provisions for the maintenance, education, and advancement of such child or children, with remainder to the use of the first and other sons of the father by the mother in tail male, with divers remainders over: AND in the indenture now in recital are contained powers of sale and exchange as therein mentioned, and it was thereby declared that the moneys to arise from any such sale should be laid out in the purchase of other lands and hereditaments to be settled to the like uses: AND WHEREAS since the date of the said indenture of settlement, from time to time, certain of the lands and hereditaments therein comprised have been sold and exchanged for other lands and hereditaments, and enfranchisements have been made of copyhold hereditaments holden of the several manors originally comprised in, or which have become subject to the uses and trusts of the said indenture of settlement under the powers in that behalf contained in the same indenture or under statutory powers, and the proceeds of such sales and capital moneys received in respect of such exchanges and enfranchisements have been from time to time laid out and invested partly in the purchase of other lands and hereditaments, which have been conveyed to the uses of the settlement created by the said indenture, and partly in the several stocks, funds, and securities hereinafter mentioned, which, or such of them as had not been previously laid out, were immediately before the execution of the indenture hereinafter recited liable to be laid out in the purchase of lands and hereditaments, to be so conveyed as aforesaid: AND WHEREAS the lands and hereditaments now subject to the uses and trusts of the said indenture are particularly

powers of sale, &c.;

sale and exchange of lands under powers in recited settlement;

lands now subject to the settlement;

described in the first schedule hereto, and the several moneys, stocks, funds, and securities which now represent the proceeds of such sales and capital moneys as aforesaid respectively are specified in the second schedule hereto: AND WHEREAS the husband is the first son of the father by the mother, and attained the age of twenty-one years on the —— day of ——, 19—, and there have been issue of the father by the mother —— other children and no more, of whom ——, namely [*names*], have attained the age of twenty-one years, and the remaining ——, namely [*names*], are now infants and unmarried; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said lands and hereditaments described in the said first schedule hereto, and also the said moneys, stocks, funds, and securities, should be resettled to the uses, upon the trusts and in manner hereinafter appearing: AND WHEREAS, in pursuance and part performance of the said agreement, by an indenture (hereinafter called "the disentailing deed") dated the —— day of ——, 19—, and enrolled and perfected as a disentailing assurance, or intended so to be, and made between the father, of the first part, the husband, of the second part, and [*grantee to uses*], of the third part, the lands and hereditaments described in the said first schedule hereto, and all other (if any) the hereditaments subject to the subsisting uses of the said indenture of settlement, now stand limited, subject to the uses, estates, and powers limited or declared by, and subsisting in the same premises by virtue of the said indenture of settlement, and which preceded the estate in tail male of the husband, other than the use limited to the father for his life (*n*), and to the uses and estates limited or to be limited in exercise of such powers, to such uses, and upon, with and subject to such trusts, powers, provisions, and declarations as the father and husband shall by deed appoint, and in default of such appointment, and so far as no such appointment shall extend, to the uses, and upon, with and subject to the trusts, powers, and declarations to which the premises would have stood limited, if the indenture now in recital had not been executed; AND by the indenture now in recital the said several moneys, stocks, funds, and securities specified in the

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state of family:

agreement for marriage and resettlement;

disentailing assurance;

(*n*) These uses include the limitations of pin-money and jointure rentcharge in favour of the intended husband's mother and of a term for securing portions for his younger brothers and sisters, so that there is no necessity to insert such uses in the present settlement.

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said second schedule hereto now stand limited, subject to the uses aforesaid, which preceded the said estate in tail male of the husband, other than the use limited to the father during his life, and to the uses and estates limited or to be limited in exercise of such powers, to the like uses, upon the like trusts and subject to the like powers and provisions as were thereinbefore declared and contained concerning the hereditaments thereby assured, or as near thereto as circumstances would permit; AND WHEREAS the said several moneys, stocks, funds, and securities specified in the said second schedule hereto, are intended respectively to be forthwith paid to and transferred into the names of the said [*trustees*], to the intent that the same may be held by them to the uses, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same: AND WHEREAS the father and husband (*o*) have agreed to make such settlement as is hereinafter contained of the manors, messuages, lands, hereditaments, moneys, stocks, funds, securities, and premises described in the said schedules hereto, and all other (if any) the hereditaments and premises which are now subject to the joint power of appointment contained in the disentailing deed.

intended transfer to trustees of investments;

agreement for resettlement.

Testatum. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

1. In exercise of the power in this behalf given to them by the disentailing deed, and of every other power them hereunto enabling, they, the father and husband, as settlors, hereby appoint that all the messuages, lands, and hereditaments described in the first schedule hereto, and all other (if any) the hereditaments which immediately before the execution of the disentailing deed were subject to the then subsisting uses of the hereinbefore recited indenture of settlement, shall immediately after the execution of these presents, subject to the uses, estates, and powers subsisting in the same premises by virtue of the said indenture of settlement, and which immediately preceded the estate in tail male of the

Appointment. Parcels.

(*o*) It is advisable that on a resettlement of real estate the son should be fully advised as to his position and rights under the original settlement. The rule that if the father derives any benefit for himself from the transaction the son should be *separately* advised, was re-affirmed by Cotton, L.J., in *Tucker* v. *Bennett*, 38 Ch. D. at p. 9; see also *Hoblyn* v. *Hoblyn*, 41 Ch. D. at p. 205.

husband other than the use limited to the father for his life, and to the uses and estates limited or to be limited in exercise of such powers, remain and be, until the solemnization of the intended marriage, to the uses, upon the trusts, with and subject to the powers and provisions to, upon, and subject to which the premises stood limited immediately before the execution of these presents; And from and after the solemnization of the said intended marriage [to such uses, upon such trusts, and with and subject to such powers and provisions as the father and husband shall from time to time by any deed or deeds revocable or irrevocable jointly appoint; And in default of such appointment and so far as no such appointment shall extend (*p*)] to the use that the husband may, during the joint lives of himself and the father, receive the yearly rentcharge of £—— to be charged upon and issuing out of the premises hereby settled, and to be payable by equal quarterly payments without any deduction (*q*) ["except for duty" *or* "free from all death duties"], the first of such payments to be made at the end of three calendar months of the intended marriage if the husband shall then be living; And to the further use that if the husband shall die in the lifetime of the wife, she may from and after the death of the husband receive during her life the yearly rentcharge or rentcharges following (that is to say), if and so long as the father shall be living, the yearly rentcharge of £——, and after the death of the father the yearly rentcharge of £——, to be respectively charged upon and issuing out of the premises hereby settled, and to be payable by equal quarterly payments without deduction [except for duty *or* free from all death duties], the first of such payments, as to the rentcharge of £——, to be made at the end of three calendar months after the death of the

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To subsisting uses until the marriage.

Afterwards, to the use that intended husband may receive a rentcharge for his life.

And that the wife may receive rentcharges by way of jointure.

(*p*) It is sometimes thought advisable to insert here a joint power of appointment overruling all the limitations of the resettlement, including the father's life estate, so as to enable the father and eldest son jointly to dispose of the fee simple in possession, and to receive and apply the moneys receivable without the intervention of the trustees of the settlement, and for purposes to which capital moneys arising under the Settled Land Acts are not applicable. See, as to the advisability of inserting such a joint power of appointment or a power of revocation, *Welman* v. *Welman*, 15 Ch. D. at p. 576.

(*q*) As to the meaning of "without any deduction," see *ante*, p. 430, note (*u*).

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husband, if the wife and father shall then be living, and as to the rentcharge of £——, to be made at the end of three calendar months after the death of the survivor of them, the father and husband, if the wife shall then be living, but so that the wife shall not, during coverture, have power to dispose of or charge the said rentcharges respectively, by way of anticipation: AND, subject and charged as aforesaid, to the use of the father for his life without impeachment of waste, in restoration and continuation of the former life estate of the father limited to him by the hereinbefore recited indenture of settlement (*r*); AND, after the decease of the father, to the use of the husband for his life without impeachment of waste: AND, after the decease of the husband, to the use of the said [*trustees*], for a term of 500 years, to commence from the death of the survivor of them, the father and husband, without impeachment of waste, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same; AND from and after the determination of the same term, and in the meantime subject thereto, and to the trusts thereof, to the use of the first and other sons of the husband successively according to seniority in tail male (*s*), with remainder to the use of the first and other sons of the husband successively according to seniority in tail; with remainder to the use of the first and other daughters of the husband successively according to seniority in tail; with remainder [*similar limitations to the use of each of the living younger brothers of the husband successively*, nominatim, *for life and their issue in tail*]; with remainder to the use of every son of the father hereafter to be born successively according to seniority in tail; with remainder [*limitations successively to the use of living sisters of the husband*

Remainder to use of father for life.

Remainder to use of intended husband for life.

Remainder to use of trustees for 500 years.

Remainder to use of first and other sons of husband in tail male, and in tail;

further limitations in strict settlement (*t*).

(*r*) As to the effect of restoring the life estate of the father under the original settlement, see *Re Cornwallis-West and Munro*, [1903] 2 Ch. 150, explained in *Re Lord Wimborne and Browne*, [1904] 1 Ch. 537; and see also 48 Sol. J. pp. 6 and 29; *Re Mundy and Roper*, [1899] 1 Ch. 275.

(*s*) The words "in tail," or "in tail male," or "in tail female" are now sufficient as words of limitation without the words "heirs of the body," or "heirs male of the body," or "heirs female of the body": see Conveyancing Act, 1881, s. 51.

(*t*) The frame of strict settlements varies considerably, according to the wishes of the parties. In the present precedent the issue of the eldest son are exhausted before any limitations are inserted in favour of his younger brothers and sisters.

for life and their issue in tail and of his after-born sisters in tail, with remainders to the use of other collaterals and their issue]; with remainder to the use of the husband, his heirs and assigns.

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2. Every person who after the determination of the life estate of the husband shall, under or by virtue of the limitations hereinbefore contained or of this proviso, become entitled beneficially to the possession or receipt of the rents and profits of the said manors, lands, and hereditaments hereinbefore settled as tenant for life, or tenant in tail male or in tail by purchase, and who shall not then use and bear the surname and arms of —— other than a married woman [and other than a person who would forfeit another estate by complying with this condition], shall within the space of one year next after he or she shall so become entitled, or (being an infant) within one year after he or she shall attain the age of twenty-one years, AND every person to whom any female so becoming entitled as aforesaid shall be married, or whom she shall afterwards marry, not being a peer or the eldest son of a peer, shall, within one year next after such female shall so become entitled or shall so marry, whichever of such events shall last happen (unless in the said respective cases any such person shall be prevented by death), take upon himself or herself and use on all occasions the surname of —— either alone or in addition to his or her other surname (but so that the name of —— shall be the last and principal name (*x*)), and shall assume the arms of —— either alone or quarterly with his or her family arms: AND shall within such one year apply for and endeavour to obtain a proper licence to take and use the surname of ——, and to assume and bear the arms of —— as aforesaid (*y*): AND in case any person who shall so become entitled as aforesaid, or such husband as aforesaid of any such person being a female, shall refuse or neglect (*z*) within such one year to take and use such surname, or to assume such arms, or to take such steps as aforesaid, or shall at any time afterwards discontinue to use such

Name and arms clause (*u*).

Penalty for neglect to assume name and arms.

(*u*) As to name and arms clauses generally, see Vaizey, 1262; *Re Greenwood*, [1903] 1 Ch. 749; *Re Drax*, 75 L. J. Ch. 317.

(*x*) See *Re Eversley*, [1900] 1 Ch. 96.

(*y*) See, as to this, *Austen* v. *Collins* (1886), W. N. p. 91; and *Re Croxon*, [1904] 1 Ch. 252, where the condition failed because a licence could not be obtained.

(*z*) As to the effect of the words "refuse or neglect" in the case of an infant, see *Re Edwards*, [1910] 1 Ch. 541.

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surname or to bear such arms [from any cause other than in order to avoid forfeiting another estate or by reason of his or her becoming a peer or peeress, or becoming entitled to use and using by courtesy the title of a peer or peeress], then and in every such case from and after the expiration of such one year, or immediately after such discontinuance as aforesaid (as the case may be), if the person who or whose husband shall so for the time being refuse, neglect, or discontinue as aforesaid, shall be a tenant for life, the limitations hereinbefore contained to the use of such person during his or her life shall absolutely determine and be void; And if the person who or whose husband shall so, for the time being, refuse, neglect, or discontinue as aforesaid, shall be tenant in tail male or in tail by purchase, then the limitations hereinbefore contained under which such person shall be so tenant in tail male or in tail, and in case of such person being tenant in tail male, then also the limitations hereinbefore contained to him in tail, shall absolutely determine and be void; And in the said respective cases the manors, lands, and hereditaments hereby settled shall immediately go over in the same manner as if such person, being tenant for life, were actually dead, or, being tenant in tail male or in tail, were actually dead, and there was a general failure of his or her issue, without prejudice nevertheless to, but not so as to accelerate any jointure or jointures, portion or portions, sum or sums of money, lease or leases, sale or sales, exchange or exchanges, partition or partitions, or appointment or appointments of new trustees, which previously to such determination, shall have been charged, granted, or made under any of the powers for those purposes herein contained or given by any statute: Provided always, that the determination of the estate of any tenant for life by virtue of the proviso hereinbefore contained shall not exclude or prejudice any of the contingent remainders hereinbefore limited to his or her sons and daughters respectively, or any other persons, but that so long as any such remainder shall be so contingently subsisting and capable of taking effect, the said manors, lands, and hereditaments hereby settled shall remain and be to the use of the said [*trustees*], their heirs and assigns, during the remainder of the life of the tenant for life whose estate shall have so determined as aforesaid, upon trust, that immediately from and after such determination as aforesaid of such estate for life, and during the suspense and contingency of any such expectant remainders, the trustees or trustee of

Contingent remainders not to be prejudiced.

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this settlement shall pay and apply the rents and profits of the premises unto the person or persons for the time being entitled under or by virtue of the limitations and provisions hereinbefore contained to the then first vested estate in remainder expectant on the death of such person as aforesaid.

Shifting clauses carrying over settled lands on accession to family title and estates with provisoes to meet the case of a previous exercise of the powers of jointuring or charging portions.

3. If at any time or times after the determination of the life estate in the hereditaments hereby settled hereinbefore limited to the father in restoration of his former life estate therein, the title and dignity of Earl of [A.], together with the [A.] family estates of Lord A., in the county of X., or any of them, or any lands, hereditaments, or other property, which may by any means have become substituted for the said family estates, or any of them (hereinafter called "the family estates"), or any part or parts thereof respectively (the same part or parts being at the least equal in value to the hereditaments hereby settled, after allowing for such incumbrances as may affect the same premises respectively), should, by any means whatsoever (*a*), come to or devolve upon any person hereby made tenant for life of the hereditaments hereby settled, and, as to the said family estates, for an estate for his life, or any other estate of freehold, or inheritance in possession, or upon any person hereby made tenant in tail male or in tail by purchase of the hereditaments hereby settled, and as to the said family estates, for an estate in tail male, or any other estate of inheritance in possession, so that the person acquiring the said family estates, or such part or parts thereof as aforesaid, shall become actually entitled, or would, if of full age, be actually entitled in respect thereof to the possession or the receipt of the rents and profits or income thereof, then, and so often as the same shall happen, the uses or estates for life, or in tail male or in tail (as the case may be), hereinbefore limited or appointed of or in the hereditaments hereby settled, to or for the benefit of the person acquiring as aforesaid the said title and family estates, or such part or parts thereof as aforesaid, and all powers annexed to the same uses and estates respectively, but not any uses, estates, and charges which shall have been limited, or created in exercise of such powers, or any of them (except as hereinafter is otherwise

(*a*) If the shifting clause refers only to family estates irrespective of a title, insert here the words "except by means of a purchase for value." As to shifting clauses of this kind, see 3 Dav. Prec. 3rd ed. 349, 368 *et seq.*

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provided), or of any statutory power, shall absolutely cease and determine; And from and after such cesser or determination, the hereditaments hereby settled shall go over and devolve to the uses, upon the trusts, and with and subject to the powers and provisions (but subject and without prejudice to the uses and estates preceding the uses or estates so ceasing or determining as aforesaid, and to the powers annexed to such preceding uses and estates, and all uses, estates, and charges which shall have been limited or created in exercise of such powers or any of them) to, upon, with, and subject to which the same hereditaments would have stood limited and settled by virtue of these presents if such person so acquiring the said title and family estates or such part or parts thereof as aforesaid, being a tenant for life of the hereditaments hereby settled, were then dead, or, being a tenant in tail male or in tail thereof, were then dead without leaving any issue capable of inheriting under the limitations in tail male or in tail herein contained; save and

Saving clause.

except that, if, at the time when the said title and family estates shall come to or devolve upon any person hereby made tenant for life, there shall not be in existence any child of such person capable of taking the next vested estate in remainder under the limitations hereinbefore contained, then the cesser or determination of the estate of such person so directed to cease or determine as last aforesaid, shall, during the remainder of his life, or until the birth of such child, be suspended and shall not take place (*b*); Provided that, if by virtue of the shifting clause hereinbefore contained, the ultimate limitation of the hereditaments hereby settled to the use of the husband, his heirs and assigns, would but for this present provision take effect in possession either absolutely or subject to any uses or estates, or charges limited or created by these presents or by exercise of any powers hereby conferred, or of any statutory power, then and thereupon, the hereditaments hereby settled shall immediately revert and remain to the uses, upon the trusts, and with and subject to the powers and provisions, to, upon, with and subject to which the same hereditaments would have stood limited if the said shifting clause had not been herein contained: Provided always, that, if at the time when the said

Reverter clause.

Proviso to meet the case

(*b*) See *Fazakerly* v. *Ford*, 4 Sim. 390. If preferred, a proviso similar to that at the end of the name and arms clause (*ante*, p. 448) may be substituted for this saving clause.

family estates, or such part or parts thereof as aforesaid, shall come to or devolve upon any person hereby made tenant for life as aforesaid, the power of jointuring hereinbefore contained, shall have been exercised by him in favour of any then existing wife, and the estate acquired by him in the said family estates, or such part or parts thereof as aforesaid, shall either be an estate of inheritance, or, being only an estate for life, shall be accompanied with a power of jointuring exerciseable in favour of the said then existing wife, to the full extent to which the said power of jointuring herein contained shall have been exercised in her favour, and so that she might derive the same benefit from an exercise of the power so acquired as from the grant, limitation, or appointment then already made under the said power of jointuring herein contained, then, and in every such case, the rentcharge, or rentcharges, which shall have been granted, limited, or appointed under the said power of jointuring herein contained, and all powers and remedies, and terms of years, which shall have been granted, limited, or appointed for securing the payment of the same, shall absolutely cease and determine; but, if the power of jointuring accompanying any such estate for life as aforesaid, shall not be exerciseable in favour of the then existing wife to the full extent to which the said power of jointuring herein contained shall have been already exercised in her favour, and so that she might derive the same benefit from an exercise of the power so acquired as from the grant, limitation, or appointment then already made in her favour under the said power of jointuring herein contained, then, and in such case, the rentcharge, or rentcharges, which shall have been so granted, limited, or appointed in her favour as aforesaid, or the powers or remedies, or terms of years, which may have been granted, limited, or appointed, for securing the payment of the same, shall not cease or determine, but so much only of the same shall from time to time be raisable, or payable, for the benefit of the then existing wife, as, in addition to any rentcharge, or rentcharges, which may or might be granted, limited, or appointed in her favour, under the power of jointuring so acquired as aforesaid (if exercised to its full extent), would be sufficient to make up the full amount of the said rentcharge, or rentcharges, which shall have been so limited, granted, or appointed as aforesaid, under the said power of jointuring herein contained, and the residue thereof shall from time to time absolutely sink for the

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of a previous exercise of power of jointuring.

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benefit of the person or persons for the time being entitled under the limitations hereinbefore contained to the possession or the receipt of the rents and profits of the hereditaments hereby settled; PROVIDED ALSO, that if at the time when the said family estates, or such part or parts thereof as aforesaid, shall come to or devolve on any person hereby made tenant for life, the power of charging with portions herein contained shall have been exercised by him in favour of any child or children whether born or unborn, and the estate acquired by him in the said family estates, or such part or parts thereof as aforesaid, shall either be an estate of inheritance, or being only an estate for life, shall be accompanied with a power of charging with portions, exerciseable in favour of the said child or children, to the full extent to which the said power of charging hereinbefore contained shall have been exercised in his, her, or their favour, and so that he, she, or they might derive the same benefit from an exercise of the power so acquired as from the charge or charges then already made under the said power of charging herein contained, then, and in every such case, the charge or charges which shall have been so made under the said power of charging herein contained (except as to any sum or sums of money, or interest which shall have been actually raised and paid), and all powers and remedies, and terms of years, which shall have been limited or created for securing the payment thereof (but subject and without prejudice to any disposition or dispositions which shall have been actually made under the trusts of such term or terms), shall absolutely cease and determine; but, if the power of charging, accompanying any such estate for life as aforesaid, shall not be exerciseable in favour of the said child or children to the extent to which the said power of charging herein contained shall have been already exercised in his, her, or their favour, and so that he, she, or they respectively might derive the same benefit from an exercise of the power so acquired as under the charge already made in his, her, or their favour, under the said power of charging herein contained, then and in such case, the charge or charges which shall have been so made, or the powers or remedies, or terms of years, which shall have been limited or created for securing the payment thereof, shall not cease or determine, but so much only of the same charge or charges shall from time to time be raisable or payable for the benefit of such child or children respectively, as in addition to the charge or charges which may or

Proviso to meet the case of a previous exercise of power of charging portions.

might be charged in his, her, or their favour, under the power of charging so acquired as aforesaid (if exerciseable to its full extent), would be sufficient to make up the full amount of the charge or charges which shall have been so made as aforesaid under the said power of charging hereinbefore contained, and the residue of the same charge or charges shall absolutely sink for the benefit of the person or persons for the time being entitled under the limitations hereinbefore contained to the hereditaments hereby settled.

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4. The said hereditaments are hereby limited to the use of the said [*trustees*], for the said term of 500 years, upon the trusts and with and subject to the powers and provisions following, that is to say:—

Trusts of portions term.

(i) If there shall be any younger child or children of the said now intended marriage (that is to say, any child or children other than an eldest or only son, or any other son or sons, who, before his or their respectively attaining the age of twenty-one years shall become, or if of full age would be indefeasibly, entitled either in possession or remainder by virtue of these presents to the said hereditaments for the first estate in tail male, or any daughter or daughters, who before her or their respectively attaining that age or marrying shall have become indefeasibly entitled either in possession or remainder under or by virtue of these presents to the said hereditaments for the first estate in tail) (*c*), who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees"), shall, after the death of the survivor of them, the father and husband, by mortgage of the hereditaments comprised in the said term of 500 years, or any part thereof, or by, or out of the rents and profits thereof, or by sale of any timber or minerals, or by all or any of such means, or by any other reasonable means raise for the portion or portions of such younger child or children as aforesaid, such sum of money as hereinafter mentioned, &c. [*continue trusts of term of* 500 *years for raising portions*, ante, *p.* 431, *to be paid* (*in default of appointment to the contrary*) *to the children on attaining*

(*c*) This clause as to daughters should be inserted where, as in the text, the limitations in favour of the eldest son's daughters take precedence of those in favour of his younger brothers, &c.

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twenty-one years or marriage, "if the same respectively shall happen after the death of the survivor of the father and husband; but if the same respectively shall happen during their lives, or the life of such survivor, then immediately after the death of such survivor"].

(ii) In default of appointment, &c. [*hotchpot clause*, *p.* 432].

Maintenance.

(iii) The trustees shall, after the death of the survivor of them, the father and husband, &c. [*continue maintenance clause*, ante, *p.* 432].

Advancement.

(iv) The trustees may, after the death of the husband, or in his lifetime, upon his written request (but during the lifetime of the father, with his consent in writing), raise, &c. [*continue advancement clause*, ante, *p.* 433].

(v) [*Power for* "the husband after the death of the father" *to require portions to be raised in his lifetime*, ante, *p.* 433.]

(vi) [*Power for trustees to create specific securities.*]

(vii) [*Husband to keep down interest on portions raised in his lifetime*, *p.* 434.]

(viii) [*Proviso that surplus rents shall be taken by reversioner*, *p.* 434.]

Power for the husband to jointure a future wife.

5. It shall be lawful for the husband if he shall survive the wife and marry again, at any time, by deed, revocable or irrevocable, or by will, or codicil, to appoint to any and every woman whom he may so subsequently marry (and that either before or after any and every such marriage) for her life, or for any less period, any yearly rentcharge or yearly rentcharges by way of jointure, not exceeding in the whole by the year the sum of £——, free from all deductions except for duty [*or*, "free of all death duties"] to be charged upon all or any of the hereditaments hereby settled, and to be paid at such times and in such manner as the husband shall direct, but so that no such payment shall be made during the life of the father without his consent in writing: And this power of jointuring may be exercised as often as the husband shall marry.

Power for the husband to charge portions for children of a future marriage.

6. It shall be lawful for the husband if he shall so marry again as aforesaid by deed, revocable or irrevocable, or by will or codicil (but subject to the life interest of the father and to the said term of 500 years, and the trusts thereof), to charge all or any of the hereditaments hereby settled with the payment of such sum or sums of money as he shall think fit, not exceeding in the several

events hereinafter specified the several sums hereinafter mentioned, for the portion or portions of the child or children of the husband by any after-taken wife, that is to say: If there shall be but one such child, the sum of £——, And if there shall be but two such children, the sum of £——, And if there shall be three or more such children, the sum of £—— [*continue power to charge estates with portions for children of subsequent marriage; power to charge* ("but subject as aforesaid") *yearly sums for maintenance, and sums for advancement, and to limit terms for securing portions*, ut ante, *p.* 435].

Power for male tenant for life (other than father and intended husband) to jointure.

7. It shall be lawful for every male person hereby made tenant for life (other than the father and husband respectively), either before or after he shall become tenant for life in possession or entitled to the rents and profits of the hereditaments hereby settled (but subject to the uses and estates preceding his estate, and to the powers annexed to such preceding uses or estates, and to the uses or estates limited in exercise of such powers), by deed, revocable or irrevocable, or by will or codicil, to appoint to any woman whom he may marry for her life any yearly rentcharge by way of jointure, not exceeding the sum of £——, to be charged upon all or any of the hereditaments hereby settled and to be paid at such times, and in such manner, as the person exercising this power shall deem proper: And this power of jointuring may be exercised as often as the person for the time being entitled to exercise the same shall marry: Provided always, that no jointure rentcharge appointed in exercise of the power lastly hereinbefore contained shall actually become a charge upon the hereditaments expressed to be charged therewith or be payable, unless the person who shall have exercised such power shall become tenant for life in possession of the hereditaments hereby settled, or unless some of his issue shall become entitled to the possession thereof, or would have become so entitled if of full age: Provided also, that the hereditaments hereby settled shall not, under the powers of jointuring hereinbefore contained, be at any one time subject to the payment of rentcharges exceeding in the whole the yearly sum of £——, such yearly sum to be inclusive of the rentcharge of £—— hereinbefore limited to the wife, and of any rentcharge which may be appointed in favour of any future wife of the husband, so that if by the exercise of the powers of jointuring hereinbefore contained the said heredita-

No jointure to be charged unless appointor or his issue become entitled in possession.

Estates not to be charged with more than a fixed yearly sum for jointures.

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ments, or any part thereof, shall for the time being be charged with a greater yearly sum in the whole than £——, the rentcharge, or such part thereof, by the charge whereof such excess shall have been occasioned, shall, during the continuance of such excess, absolutely sink for the benefit of the person for the time being entitled under the limitations hereinbefore contained to the receipt of the rents and profits of the hereditaments hereby settled, and the rentcharges respectively shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

Powers for tenants for life (other than father and intended husband) to charge portions.

8. It shall be lawful for every male person hereby made tenant for life (other than the father and husband respectively), either before or after he shall become tenant for life in possession of, or entitled to the rents and profits of the hereditaments hereby settled (but subject to the uses and estates preceding his estate and to the powers annexed to such preceding uses or estates, and to the uses and estates limited in exercise of such powers), by deed revocable or irrevocable, or by will or codicil, to charge all or any of the hereditaments hereby settled with the payment of any sum or sums of money for the portion or portions of the child or children (other than an eldest or only son, or a son who, by the death of an elder son or sons, shall be or become an eldest or only son) of the person for the time being exercising this power not exceeding, if there shall be but one such child (other than as aforesaid), the sum of £——, And if there shall be but two such children (other than as aforesaid), the sum of £——, And if there shall be three or more such children (other than as aforesaid), the sum of £——, to be payable to or amongst such child or children, or any one or more exclusively of the others or other of such children, at such times and in such manner in every respect, and if more than one in such shares, as the person for the time being exercising this power shall in manner aforesaid direct, And by the same or any other deed, or by will or codicil (but subject as aforesaid), to charge the premises charged with such portion or portions respectively with such yearly sum or sums, to commence from such time or times as the person for the time being exercising this power shall in manner aforesaid direct, for or towards the maintenance, &c. [*continue power to charge for maintenance*, ut ante, *p.* 435]: And also by the same or any other deed, &c. [*continue power to charge gross sums for advancement, and limit terms*,

ut ante, *p.* 436]: PROVIDED ALWAYS, that no portion which may be charged in exercise of the power lastly hereinbefore contained shall actually become a charge, &c. (see *ante*, p. 435): PROVIDED ALSO, that the said hereditaments and premises hereby settled shall not under the powers of charging portions hereinbefore contained become ultimately liable or subject to the payment of any greater sum of money in the whole than the principal sum of £——, such principal sum to be inclusive of the sums of money hereby charged, or which may hereafter be charged, for the portions of children of the husband by the said wife, or by any future wife, so that if by the exercise of the aforesaid powers of charging portions or any of them the hereditaments hereby settled, or any part thereof, would, but for this present proviso, be charged with a greater sum in the whole than £——, the charge or charges creating such excess shall, during the continuance of such excess, not take effect as to the portion or portions to be thereby respectively charged, or as to such part thereof as shall form the excess, and charges for portions shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

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Proviso that estates shall not be charged unless appointor or his issue become entitled in possession.

Proviso that estates shall not be charged with more than a fixed sum for portions.

9. Notwithstanding anything contained in the Settled Land Acts, 1882 to 1890, or any Acts for the time being in force relating to settled lands (hereinafter referred to as "the Settled Land Acts"), the tenant for life in possession or other person or persons having for the time being under the Settled Land Acts the powers of a tenant for life in relation to the hereditaments hereby settled (hereinafter called "the tenant for life"), may in addition to or in extension of the powers and provisions of the Settled Land Acts exercise any of the following powers in like manner as if they had been conferred by or contained in the said Acts, that is to say:—

Extension of the powers of a tenant for life under S. L. A. (*d*).

(i) May exercise any of the powers conferred on him by any

Notices to trustees of settlement, &c. dispensed with (*e*).

(*d*) Any limitation of the powers of a tenant for life under the S. L. Acts is void under sect. 51 of the S. L. A. 1882, but the settlement may be so framed as to avoid there being a tenant for life under the Acts: see notes on this subject in K. & E. 10th ed. vol. 2, p. 759. Additional or larger powers may be conferred on a tenant for life under sect. 57 of the S. L. A. 1882.

(*e*) See, as to notice of intention to exercise the statutory powers, sect. 45 of the S. L. Act, 1882, and sect. 5 of the S. L. Act, 1884.

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of the Settled Land Acts, or by these presents in extension thereof, without previous notice of his intention to exercise any such power to any trustee, or to the solicitor of any trustee, and without the leave of the Court (*f*).

Mining rents not to be capitalised (*g*).

(ii) May grant a mining lease, whether the mines or minerals leased are already opened and in work or not, so that no part of the rent shall at any time be set aside as capital money arising under the Settled Land Acts, but the whole of such rent shall go as rents and profits.

Power to make long leases, and fee farm grants (*h*).

(iii) May grant any lease of the hereditaments hereby settled, or any part thereof, or of any easement, right, or privilege of any kind over or in relation to the same for any purpose whatever, whether involving waste or not, for any term not exceeding, in case of a building lease (as defined by the Settled Land Act, 1882) [999] years, in case of a mining lease [100] years, and in case of any other lease [42] years; AND grants may be made of the said lands, or any part thereof, in consideration of rents in perpetuity, either by way of rentcharge, or secured by a condition of re-entry on non-payment thereof or otherwise as the tenant for life shall think proper or expedient.

Power for tenants for life to sell or lease principal mansion-house, park, &c. without consent (*i*).

(iv) May sell or lease the principal mansion-house on the land hereby settled and the demesnes thereof, and other lands usually occupied therewith, without the consent of the trustees or an order of the Court.

Power to sell or enfranchise in considera-

(v) May sell the hereditaments hereby settled, or any part thereof, or any easement, right, or privilege over or in respect of the same, and enfranchise any copyholds for the time being subject

(*f*) For an enumeration of limited owners having the powers of a tenant for life, see sect. 58 of the S. L. Act, 1882.

(*g*) See, as to the capitalisation of mining rents, sect. 11 of the Act of 1882. The statutory restriction in this respect is often found to be inconvenient. As to the distinction between opened and unopened mines, see *Re Maynard's S. E.*, [1899] 2 Ch. 347; *Greville Nugent* v. *Mackenzie*, [1900] A. C. 83; *Re Chaytor*, [1900] 2 Ch. 804; *Re Baskerville*, [1910] 2 Ch. 329.

(*h*) As to the terms upon which leases may be granted under the statutory powers, see sects. 6 to 12 of the Act of 1882, and sects. 7, 8 and 9 of the Act of 1890. As to giving a lessee an option to purchase the reversion, see *ante*, p. 416, note (*e*). The tenant for life has power to accept surrenders of leases under sect. 13 of the S. L. Act, 1882.

(*i*) As to the restrictions with regard to sales and leases of the principal mansion-house, &c., see sect. 10 of the Act of 1890.

to the trusts hereof in consideration, wholly or partially, of a freehold rentcharge payable yearly or half-yearly, to be secured upon the hereditaments so sold or enfranchised, or on any other hereditaments, or partly in the one way and partly in the other, and to be limited to, upon, and subject to the same uses, trusts, powers, and provisions as the hereditaments hereby settled, or as near thereto as circumstances will admit, and upon any such sale as aforesaid, may bind the hereditaments sold with the burden of any restrictive covenant or condition.

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tion of freehold rentcharge.

(vi) May sell the hereditaments hereby settled, or any part thereof, to any person or persons or corporation for building purposes, as defined by the Settled Land Act, 1882, with such powers, easements, and rights, and subject to such exceptions, reservations, restrictions, covenants, and conditions as the tenant for life shall think expedient in consideration, wholly or partially, of a freehold rentcharge to be payable, secured, and limited in like manner as in the last preceding sub-clause is provided with respect to the freehold rentcharge therein referred to; but so that on any such sale the rent to be reserved shall be the best that can reasonably be obtained, having regard to any fine or premium which may be taken, save that a peppercorn or other nominal rent may be made payable for any period not exceeding the first five years; AND that every purchaser shall execute a duplicate or counterpart of the conveyance, and shall thereby covenant for the due payment of the rent thereby reserved: PROVIDED that any fine or premium taken upon any such sale shall be paid to the trustees, and applied as capital moneys.

Power to sell for building purposes.

(vii) May sell or grant for a nominal consideration, or any consideration in money or otherwise, or gratuitously, as the tenant for life may think fit, in fee simple, or for a term of years, absolute or determinable, any part or parts of the hereditaments hereby settled for any of the purposes following, that is to say, as a site for a church, parish room, mission hall, parsonage, schoolhouse, &c., &c. [*set out any objects for which it may be thought desirable to provide by this clause, with any restrictions that are suitable*].

Power to sell or grant for the purpose of a church, &c.

(viii) May purchase land in Scotland or Ireland, and may

Extension of powers to exchange and purchase lands(*k*).

(*k*) See, as to these powers, sects. 4 (8) and 23 of the Act of 1882; and as to investment of capital moneys in improving land in Scotland settled by an English settlement, see *Re Gurney*, [1907] 2 Ch. 496.

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exchange any part or parts of the hereditaments hereby settled, situate in England or Wales, for land in Scotland or Ireland.

Power to purchase or acquire easements, &c.

(ix) May purchase or acquire any easement, right, or privilege, or the benefit of any restrictive covenant in connection with or for the benefit of the hereditaments hereby settled, or any part thereof, for such consideration in money or otherwise, and upon such terms as the tenant for life shall think fit.

Power to raise money on mortgage (*l*).

(x) May raise on mortgage of the settled lands, or any part thereof, all or any moneys which may be raisable under the trusts of any term hereby limited or charged under any power hereby given or required for the purpose of any purchase or acquisition hereby or by statute authorised or directed to be made, or for the payment of any estate duty, settlement estate duty, succession duty, increment value duty, or reversion duty, or for any purpose for which capital moneys are hereby or by statute authorised to be expended, such moneys to be paid to the trustees of the settlement, and may secure the repayment of the moneys so raised, with interest at such rate as the tenant for life shall think proper, by a mortgage in fee simple or for a term of years, with such powers and provisions, and upon such terms as the tenant for life may think proper; AND no mortgagee paying or advancing money on any mortgage, purporting to be made under this clause, shall be concerned to see that such or so much money is required, or as to the application of the moneys so raised.

Power to release easements and covenants.

(xi) May release any easement or privilege, or the benefit of any covenant over or in respect of any of the hereditaments hereby settled, either without any consideration, or for such consideration in money or otherwise, and generally upon such terms as the tenant for life may think fit (*m*).

Power to refer matters to arbitration.

(xii) May refer to arbitration—

(a) The amount to be paid or received on any purchase or sale, or for equality of exchange or partition.

(*l*) As to powers of tenant for life to raise money for purposes of enfranchisement, see *ante*, pp. 44, 45, notes.

(*m*) A tenant for life may "sell" an easement under S. L. Act, 1882, s. 3 (i), but cannot, under the Act, release it gratuitously. As to exchanging a release of an easement over other land for a release of an easement over the settled land, see *Re Brotherton*, [1907] W. N. 230; [1908] W. N. 56; 77 L. J. 58, 373. Under sect. 5 of the S. L. Act, 1890, easements may be exchanged apart from any exchange or partition of the land: *Re Bracken's S.*, [1903] 1 Ch. 265.

XXIII. RESETTLEMENT WITH LIMITATIONS TO COLLATERALS.

(b) The rent to be reserved on granting a lease or tenancy agreement (whether to or by the tenant for life), and the covenants and provisions to be contained in such lease or tenancy agreement.

(c) The terms of the surrender of a lease or tenancy.

(d) All disputes between a tenant and the reversioner, whether the tenant for life be or be not the tenant.

Capital moneys. Investment and application—Extension of powers of S. L. A.

10. Capital money arising under the Settled Land Acts, 1882 to 1890, may, in addition to the modes of investment or application thereof authorised by the same Acts, be invested or applied in any of the following ways:—

(i) Investment in or upon any of the stocks, funds, or securities mentioned in clause 12 hereof, and with and subject to the powers and provisions of clauses 13 to 17 hereof.

(ii) The payment of any money paid for equality of exchange or as purchase-money upon any exchange or purchase which may be made under any power in that behalf given by sub-clauses (viii) and (ix) of clause 9 hereof.

(iii) The discharge, purchase, or redemption of any rentcharge (whether temporary or perpetual) charged upon the hereditaments hereby settled, or any part thereof, and created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of any permanent improvement, whether of a kind authorised by the Settled Land Acts or by these presents or not.

(iv) The payment of any expenses incurred by the trustees in or about the management, protection, or preservation of the hereditaments hereby settled, or any part thereof, or otherwise in the exercise or execution of the trusts or powers of these presents, which the trustees shall in their discretion deem to be fairly chargeable against the inheritance of the said premises.

Appointment of moneys, stocks, funds, and securities, representing proceeds of sale, &c., to follow uses of freeholds.

11. In pursuance of the said agreement in this behalf, and for the consideration aforesaid, and in further exercise of the power in this behalf given to them by the disentailing deed, and of every other power them hereunto enabling, the father and husband hereby appoint that all the moneys, stocks, funds, and securities specified in the said second schedule hereto, and all other (if any) the moneys, stocks, funds, and securities which immediately before the execution of such last-mentioned deed were subject to the uses or trusts of the hereinbefore recited indenture of settle-

XXIII. RE-SETTLEMENT WITH LIMITATIONS TO COLLATERALS.

ment shall, immediately after the execution of these presents and so soon as the same premises respectively shall have been paid to or transferred unto or into the names of the said [*trustees*], subject to the then subsisting limitations, powers, and provisions of the hereinbefore recited indenture of settlement, and which immediately preceded the estate in tail male of the husband thereby limited, other than the use limited to the father for his life, and to the uses and estates limited or to be limited in exercise of any such powers, be held by and vested in the said [*trustees*] until the solemnization of the said intended marriage, to the uses, upon the trusts, and with and subject to the powers and provisions to which the same premises stood limited immediately before the execution of these presents; AND, from and after the solemnization of the said intended marriage, upon trust that the trustees shall convert into money such of the premises lastly hereby appointed as shall not consist of money, and lay out the moneys arising from such conversion, and such portion of the same premises as shall consist of money, in the purchase of freehold or copyhold hereditaments in England or Wales, to be conveyed and settled to the like uses, upon the like trusts, and with and subject to the like powers and provisions as are hereinbefore limited, declared, and contained respectively concerning the hereditaments hereby settled, and to hold, invest, and apply the said moneys and premises lastly hereby appointed until the same shall be so laid out, as if the same were capital moneys arising under the Settled Land Acts, 1882 to 1890; but so that no such conversion, purchase, investment, or application as aforesaid shall be made without the consent of the tenant for life (as hereinbefore defined).

to subsisting uses till marriage;

afterwards, upon trust for purchase of lands to be settled;

and meanwhile to hold moneys, &c. as capital moneys under S. L. Acts (*n*).

Investment.

12. The trustees may, with the consent in writing of the tenant for life (as hereinbefore defined), invest any moneys in their hands requiring or being applicable for investment hereunder in their names in or upon, &c. [*see* ante, *p.* 355, *clause* 16].

13—17. [*Add clauses* 17 *to* 21, ante, *pp.* 357, 358.]

Appointment of trustees for purposes of Conveyancing and S. L. Acts.

18. The trustees shall be trustees of the settlement hereby made for the purposes of the Conveyancing Acts, 1881 to 1911, and of the Settled Land Acts, 1882 to 1890, and a sole trustee for the

(*n*) As to investment and application of capital money, see sects. 21, 22 and 23 of the S. L. Act, 1882, and sects. 13, 14 and 15 of the S. L. A. 1890; and see K. & E. 10th ed. vol. 2, pp. 772 *et seq.*

time being shall be competent to act for all the purposes of the said Acts, including the receipt of capital money and notices hereunder (*o*).

Power to appoint new trustees of term, and new trustees of settlement.

19. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in and exerciseable by the father and husband during their joint lives and the survivor of them during his life, and after the death of such survivor in and by the tenant for life as hereinbefore defined.

20. [*Reference to Conveyancing Acts and Settled Land Acts*, ante, *p.* 440, *clause* 13.]

21. [*Power for trustees to employ agents and make charges*, ante, *p.* 359.]

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

XXIV. SETTLEMENT *on* Marriage *by a* Tenant *for* Life *in* Possession *of* Estates *settled in* Strict Settlement, Charging *his* Life Estate *with* Pin Money *in favour of the* Intended Wife, *and exercising his* Power *of* Charging *a* Jointure *for her, and* Portions *for younger* Children.

THIS INDENTURE (*p*), made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter

Parties.

(*o*) If the original settlement contained a clause appointing the trustees thereof trustees for the purposes of the compound settlement, consisting of the original settlement and any future instrument or instruments (see *ante*, p. 439, clause 11), then the clause given in note (*k*) on p. 439 should be inserted.

(*p*) It would seem that this settlement should bear three stamps of 10*s*. each, but the stamps must be adjudicated.

Stamps.

XXIV. MARRIAGE SETTLEMENT CHARGING JOINTURE AND PORTIONS UNDER POWER IN STRICT SETTLEMENT.

called "the wife"), of the second part; and [*trustee of term*], of, &c., and [*trustee of term*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and the wife; AND WHEREAS under or by virtue of an indenture of settlement dated, &c., and made, &c. [*or*, "the will of [*testator*], late of ——, deceased, dated, &c., and proved," &c.], the several manors, messuages, lands, and hereditaments, situate at ——, in the county of ——, and therein particularly described, were, subject as therein is mentioned, limited to the use of the husband for his life [*or, if the husband was not the first tenant for life under the settlement,* "to certain uses under which the husband is now tenant for life in possession of the same hereditaments"], with divers remainders over; AND in the indenture [*or*, "will"] now in recital was contained, &c. [*recite fully the powers of jointuring and charging portions*]; AND WHEREAS some of the hereditaments comprised in the said indenture of settlement [*or*, "will"] have been sold under the powers in that behalf therein contained or conferred by statute, and some of the proceeds of sale have been from time to time invested in the purchase of other hereditaments which have been conveyed or assured to the uses and upon the trusts of the same indenture of settlement [*or*, "will"], and the remainder of such proceeds of sale have been invested in and are now represented by the several stocks, funds, and securities following, that is to say [*describe them*], all of which are now standing in the names of [*general trustees*], as the trustees of the settlement created by the same indenture [*or*, "will"]: AND WHEREAS upon the treaty for the said marriage it was agreed that the husband should make such provision as is hereinafter contained for the wife and his younger children by her in manner hereinafter appearing.

Recitals (*q*): of intended marriage; of original settlement; of sales of settled lands; of agreement for provision of jointure and portions.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Grant, of

1. The husband, as settlor, with the approbation of the wife,

(*q*) If the strict settlement is created by deed this settlement may be expressed to be supplemental thereto, as follows:—

"AND supplemental to an indenture of settlement dated, &c. and made, &c. (hereinafter called 'the principal indenture')."

After this statement the recital of the intended marriage will be inserted.

hereby grants unto the said [*trustees*] and their heirs, ALL and singular (*r*) the manors, messuages, lands, and hereditaments of freehold tenure now subject to the subsisting uses of the hereinbefore recited indenture of settlement [*or*, "principal indenture," *or*, "will"] To HOLD the same unto the said [*trustees*] and their heirs, during the joint lives of the husband and wife, to the use that, if the said intended marriage shall be solemnized, the wife shall, during the now intended coverture, receive by way of pin-money the yearly sum of £——, to be charged upon and issuing out of the hereditaments and premises hereby granted, to commence from the day of the solemnization of the said intended marriage, and to be considered as accruing from day to day, but to be paid without any deduction (*t*) by equal quarterly payments, on the usual quarter days, the first payment to be made on such of the said days as shall happen next after the said intended marriage, but so that she shall not have power to anticipate such yearly sum or any part thereof; AND subject and charged as aforesaid, to the use of the husband and his assigns without impeachment of waste.

freeholds to trustees during joint lives of husband and wife to secure pin-money.

Limitation of rentcharge by way of pin-money (*s*).

2. In exercise of the said power in this behalf vested in him by the said indenture of settlement [*or*, "principal indenture," *or*, "will"]: AND of every or any other power him hereunto enabling, the husband, as settlor, hereby limits and appoints to the use of the wife, during her life, if the said marriage shall be solemnized, and she shall survive the husband, a yearly rentcharge of £—— by way of jointure to be charged upon and issuing out of the hereditaments now subject to the uses of the said indenture of settlement [*or*, "principal indenture," *or*, "will"] (*u*) to be considered as accruing from day to day but

Charge of jointure.

(*r*) If only part of the settled hereditaments are to be charged, say, "ALL and singular the messuages, lands, and hereditaments particularly described in the schedule hereto, being part of the hereditaments now subject to the uses of the said indenture of settlement [*or*, 'principal indenture,' *or*, 'will'],'' &c.

(*s*) It is no longer necessary to limit a term to secure pin-money: as to which, see notes to Byth. & Jarm. 4th ed. vol. vi. pp. 384 *et seq.*

(*t*) See *ante*, p. 430, note (*u*).

(*u*) If only part of the settled hereditaments are to be charged, say, "the said hereditaments hereinbefore granted and charged."

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to be paid to the wife by equal half-yearly payments without any deduction (*v*) [except duty (*x*)] [*or*, "free from all death duties"] on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on such of the said days as shall first happen after the death of the husband (*y*).

Charge of portions.

3. In exercise, &c. (*ut supra*), the husband, as settlor, hereby charges ALL and singular the said hereditaments and premises now subject to the uses of the said indenture of settlement [*or*, "principal indenture," *or*, "will"] (*z*), subject and without prejudice to the rentcharges of £—— and £—— hereinbefore charged thereon as aforesaid respectively, and to all powers and remedies for securing payment of the same or either of them, with the payment to the younger child or children (if any) of the said intended marriage (that is to say, any child or children other than an eldest or other son or sons who, upon his or their respectively attaining the age of twenty-one years, shall become entitled either in possession or remainder under or by virtue of the said indenture of settlement [*or*, "principal indenture," *or*, "will"], to the hereditaments thereby settled for the first estate in tail male) who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, of such sum of money as hereinafter mentioned (that is to say) if there shall be but one such younger child the sum of £——; AND if there shall be but two such younger children the sum of £——; AND if there shall be three or more such younger children the sum of £——; the said sum of £—— or £—— or £——, as the event may happen, to be raised by the said [*trustees*] or the survivor of them, or other the trustees or trustee of these presents (hereinafter called "the trustees") after the death of the husband, or in his lifetime, with his consent in writing, by such ways and means as are hereinafter mentioned, and to be held by the trustees in trust for all or such one or more exclusively of the others or

(*v*) As to these words, see *ante*, p. 430, note (*u*).

(*x*) The question whether the portions and jointure can be given free of duty will depend on the power.

(*y*) It is no longer necessary to give express powers of distress and entry for securing the rentcharge: see C. A. 1881, s. 44.

(*z*) See note (*u*), *ante*, p. 465.

other of the said younger children, &c. [*continue provisions for younger children as the husband shall appoint and in default of appointment for them equally at twenty-one or marriage,* ante, *p.* 432; *hotchpot clause*, ibid., *prefacing the clause with the words* "And the husband hereby further appoints that"]; And the husband further appoints that the trustees shall, after the death of the husband, by any such means as aforesaid, raise, but subject and without prejudice as aforesaid, such yearly sum of money as shall be equal to interest at the rate of 4 per cent. per annum on the expectant portion or portions of such younger child or children, clear of all deductions except succession duty, to commence from the death of the husband, and to be applied by the trustees in their discretion for the maintenance and education of the child or children of the said intended marriage for whom a portion or portions are intended to be hereby provided: And the husband further appoints that the trustees may, &c. [*continue advancement clause,* ut ante, *p.* 433].

Limitation of term to secure portions (*a*).

4. In exercise, &c. [*ut supra*], the husband, as settlor, hereby appoints All and singular the hereditaments and premises charged with the said portion moneys as aforesaid unto and to the use of the said [*trustees*], for the term of 1,000 years to commence from the death of the husband without impeachment of waste, but subject to the said jointure rentcharge and to the powers, remedies, and trusts under these presents or by law provided for securing payment of the same upon trust that the trustees shall by mortgage of the same premises, or any part thereof, for all or any part of the said term, or by or out of the rents and profits of the same premises, or any part thereof, or by sale of any timber or minerals, or by any other reasonable means, raise the said sum of £——, £——, or £——, as the case may be, or so much thereof respectively as shall become raisable, with such interest and maintenance moneys as aforesaid, and such sums as may become raisable for advancement as aforesaid, and the costs and expenses of and incident to the raising any such moneys or of and to the execution of the trusts of the said term; And after payment out of the moneys so raised of any such costs and expenses, shall pay and apply the same moneys to, between, or among, or for the

(*a*) It is not now generally necessary to limit a term to secure a jointure rentcharge: see sect. 44 of the Conveyancing Act, 1881.

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maintenance, education, or advancement of the said child or children of the husband by the wife, or any of them, pursuant and in satisfaction of the charges and provisions in that behalf hereinbefore contained; AND upon further trust that, subject as aforesaid, the trustees shall permit the rents and profits of the hereditaments and premises comprised in the said term or so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid to be received by the person or persons for the time being entitled to the same premises in reversion expectant on the said term.

Surplus rents to be taken by reversioner.

Power to appoint new trustees.

5. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in, and exerciseable by, the husband during his life.

IN WITNESS, &c.

XXV. SETTLEMENT *on* MARRIAGE *of* FREEHOLDS *to* USES *and of* LEASEHOLDS *in* TRUST *for the* HUSBAND *and* WIFE *successively for* LIFE, *with* REMAINDER *to the* ISSUE *of the* MARRIAGE *as the* HUSBAND *and* WIFE, *or the* SURVIVOR, *shall* APPOINT, *and, in* DEFAULT *of* APPOINTMENT, *to the* CHILDREN *in* EQUAL SHARES *in* TAIL *as* TENANTS *in* COMMON, *with* CROSS-REMAINDERS. (*A concise form.*)

Parties.

THIS INDENTURE (*b*), made, &c., BETWEEN [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part; WITNESSETH as follows:—

Grant of freeholds.

1. In consideration of the intended marriage between the said [*husband*] and [*wife*], the said [*husband*], as settlor, with the approbation hereby testified of the said [*wife*], hereby grants unto the said [*trustees*] and their heirs, ALL THAT [*describe freehold parcels*],

Habendum.

To trustees until the marriage to use of husband;

and afterwards, to use of husband for life;

remainder to use of wife for life;

TO HOLD the same unto the said [*trustees*] and their heirs, to the use of the said [*husband*], his heirs and assigns, until the marriage, and, after the marriage, to the use of the said [*husband*] and his assigns, during his life without impeachment of waste, with remainder after his death to the use of the said [*wife*] and her assigns, during her life without impeachment of waste, with remainder after her death to the use of all or such one

(*b*) Stamp, *ad valorem* at 5*s.* per 100*l.* or portion of 100*l.* of the aggregate value of the freeholds and leaseholds settled. Such stamp to be adjudicated: see *ante*, p. 343, note (*b*).

or more of the issue of the marriage in such manner as the said [*husband*] and [*wife*] shall by deed appoint, and in default of and subject to any such appointment as the survivor of them shall by deed or will or codicil appoint; AND in default of and subject to any appointment under either of the powers hereinbefore contained, if there shall be only one child of the marriage, to the use of such only child in tail, but if there shall be more than one such child, then to the use of all such children in equal shares as tenants in common in tail, with cross-remainders between them in tail, with remainder to the use of the said [*husband*], his heirs and assigns: [*Here insert such powers and provisions as may be advisable, see preceding precedents*].

remainder to issue of marriage as husband and wife or survivor appoint; in default to use of children as tenants in common in tail;

2. For the consideration aforesaid, the said [*husband*], as settlor, hereby assigns unto the said [*trustees*], ALL [*describe parcels as in the lease*], all which premises were by an indenture of lease dated, &c., and expressed to be made, &c., demised unto the said [*husband*], from the —— day of ——, 19—, for the term of —— years, at the yearly rent of £——, and subject to the lessee's covenants and conditions therein contained, TO HOLD to the said [*trustees*] during all the residue now to come and unexpired of the said term of —— years at and under the rent, covenants, and conditions by and in the said indenture of lease reserved and contained, and on the part of the lessee to be paid, observed, and performed, upon trust out of the rents and profits of the premises hereby assigned to pay the rent and observe and perform the covenants and conditions by and in the said lease reserved and contained, and on the part of the lessee to be paid, observed, and performed; AND, subject thereto, upon such trusts, and with and subject to such powers and provisions as shall as nearly correspond with the uses, trusts, powers, and provisions hereinbefore limited, declared, and contained concerning the premises hereinbefore expressed to be hereby granted, as the different nature and quality of the premises, and the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging, and so that the said leasehold premises, or any undivided share thereof, shall not vest absolutely in any person hereby made tenant in tail by purchase of the premises hereinbefore expressed to be hereby granted, or of an undivided share thereof, unless he shall attain the age of twenty-one years, but on his death under that age shall go in the same manner as if they had been freeholds of inheritance included in the grant hereinbefore contained.

remainder to use of husband in fee.

Assignment of leaseholds.

Habendum.

Trusts corresponding with uses of freeholds.

XXV. MARRIAGE SETTLEMENT OF FREEHOLDS AND LEASEHOLDS.

Trustees to be trustees for the purposes of the Settled Land Acts and Conveyancing Acts.

3. It is hereby agreed that the trustees or trustee for the time being of these presents shall be the trustees or trustee of the settlement hereby created for all the purposes of the Settled Land Acts, 1882 to 1890, and of any other Act or Acts for the time being relating to settled lands, and also for the purposes of the Conveyancing Acts, 1881 to 1911, and a sole trustee for the time being shall be competent to act for all the purposes of the said Acts, including the receipt of capital money and notices thereunder.

Power to appoint new trustees.

4. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and [*wife*] during their joint lives, and the survivor of them during his or her life.

[*Power to trustees to employ agents, &c.*, ante, *p.* 359.]

In witness, &c.

COMMON FORMS IN WILLS.

COMMENCEMENTS, &c. (*a*).

Commencement of will. Revocation of former wills.

1. I, [*testator*], late of, &c. (*b*), and now of, &c., hereby revoke (*c*) all wills, codicils, and testamentary dispositions heretofore made by me, and declare this to be my last will.

Plan of the Forms and Precedents in this volume.

(*a*) Although all the clauses to be found in ordinary wills may be classified and reduced to a moderate number of common forms, yet their combinations in practice create such variety that scarcely any two wills are alike, and a complete will is therefore seldom available as a precedent, beyond furnishing a few of the forms which the draughtsman must gather from many sources and put together, with more or less of alteration in a new order. For this reason precedents of complete wills are far less useful than precedents of conveyances, leases, mortgages, settlements, and other instruments, of which, their scope being both narrower and better defined than that of wills, the conveyancing elements are fewer and recur more often in the same combinations.

(*b*) The mention of a past as well as present address may often be useful as evidence of a testator's identity when he may have been registered by a former address in the books of the Bank of England, or of a company, as the holder of any stock or shares.

(*c*) It is better expressly to revoke all former wills than to leave open

COMMENCEMENTS, &C.

2. THIS is a [second] codicil to the will of me, [*testator*], of, &c., which bears date the —— day of —— (*d*).

Commencement of codicil.

3. I, [*testator*], of, &c., HEREBY DECLARE this to be a [second] codicil to my will, which bears date, &c.

Another form.

Will conditional on not leaving issue.

4. BUT I DIRECT that this will shall not take effect if I leave any issue surviving me (*e*).

Commencement of will.

Where testator has property abroad.

5. THIS IS THE LAST WILL of me [*testator*], of, &c., intended to operate on, and dispose of all my real and personal property in the United Kingdom; I revoke all wills, codicils, and testamentary dispositions heretofore made by me; but I declare that this will shall take effect concurrently with, but independently of another will of even date herewith, relating to property not intended to be affected by this will, situate at ——, in the Kingdom of [Italy].

Confirmation of marriage settlement.

6. I CONFIRM the settlement [*or;* several settlements] made on my marriage with [*name*], my present wife, and I declare that the provisions hereby made for my said wife and children shall be construed as supplemental to, and not in satisfaction of, any of the provisions made or covenanted to be made in and by the same settlement [*or,* settlements respectively].

APPOINTMENT OF EXECUTORS, &c.

Appointment of executors.

1. I APPOINT [*executor*], of, &c. [*or,* my son [*name*]] sole executor of my will.

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the inquiry whether they are wholly superseded by the new one. The words "This is the last and only will" would not amount to a revocation of a former will: *Simpson* v. *Foxon,* [1907] P. 54. As to the effect of an express revocation of "all former wills," see *Sotheran* v. *Dening,* 20 Ch. D. 99; *Re Kingdon,* 32 Ch. 604; *Re Gibbes,* 37 Ch. D. 143.

(*d*) See *In bon. Reade,* [1902] P. 75, in which case the will was incorrectly described.

Possibility of issue should be provided for.

(*e*) This clause is applicable where a married testator, being childless, makes no provision for children by his will, if the birth of issue by his present wife is even remotely probable. But it is generally much better, under such circumstances (unless in a case of emergency, where brevity is essential), to insert express provisions for children.

APPOINTMENT OF EXECUTORS, &c.

2. I APPOINT my wife, [*name*], sole executrix of my will.

Executors except as to certain property.

3. I APPOINT [*executor*], of, &c., and [*executor*], of, &c., executors [and trustees] of my will [except as regards the property hereinafter mentioned (*f*)]; AND I declare that the expression "my trustees" shall include the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of this my will.

Wife and son executors. Wife a trustee only during widowhood.

4. I APPOINT my wife, [*name*], during her widowhood, and my sons, [*name*], and [*name*], of, &c., to be executrix and executors (*g*) and trustees of this my will; but if my wife should marry again, all property hereby devised and bequeathed in trust shall, as soon as may be, be transferred to, and vested in the other trustee or trustees for the time being of this my will; AND I declare that the expression "my trustees" shall include the said [*trustees*] and the survivors and survivor of them, or other the trustees or trustee for the time being of my will.

Substitutive appointment of executors and trustees.

5. I APPOINT [*executor*], of, &c., and [*executor*], of, &c., executors and trustees of my will, and in case either or both of them shall die in my lifetime, or renounce probate, then I appoint [*substituted executor*], of, &c., executor in his or their place. AND in case either or both of the said [*executors*] shall die in my lifetime or decline to act as trustees or trustee, then I appoint the said [*substituted executor*] to be trustee in his or their place; AND in such case, I declare that this my will, and all the devises, bequests, powers, and provisions hereinafter contained, shall be read and construed in the same manner, and shall have the same operation and effect in all respects as if the name of the said [*substituted executor*] had been inserted therein instead of the name of the trustee or trustees so dying or refusing as aforesaid (*h*); AND I declare that the expression, &c. [*see Form* 3].

(*f*) These words in brackets will be inserted where the appointment of general executors is followed by an appointment of special executors: see *post*, Forms 7 to 12, and 17.

(*g*) The use of the word "executors" with reference to several persons, one of whom is a female, is quite warrantable.

(*h*) As to the appointment of substitutive executors, see Wms. Exors. 10th ed. p. 171.

APPOINTMENT OF EXECUTORS, &c.

Appointment of son at twenty-one as executor with others.

6. I APPOINT my son, [*name*], if and when he shall attain the age of twenty-one years, executor and trustee of my will; AND I direct that upon his attaining that age, the trust property shall be transferred to, and vested in him jointly with the other trustees or trustee for the time being of this my will.

Special executorship of life policies.

7. I APPOINT [*legatee*] executor of this my will, so far only as concerns the several policies of insurance, and the moneys, bonuses, and additions secured by or to be received in respect of the same, hereinafter bequeathed to him; AND I direct that the expense of the limited probate to be taken out by the said legatee shall be borne by him [*or*, paid out of my general personal estate] (*i*); AND I appoint [*executor*] and [*executor*] general executors of this my will.

Special executorship of business or share of business (*k*);

8. I APPOINT my son, [*name*], my executor so far only as concerns my [share and interest in the partnership] business of ——, carried on at ——, in the County of —— [under the style or firm of [A. & Co.]], and in the [partnership] property, moneys, debts [arrears of profits] and assets of the said business hereinafter respectively bequeathed to him. AND I direct that the estate duty and expenses of the limited probate to be taken out by my same son shall be paid out of my residuary estate [*or*, "shall be borne by him"].

Special executorship of mortgage debt and securities.

9. I APPOINT the said [*legatee*] to be my executor, so far only as concerns the mortgage [bond] debt and interest hereinafter bequeathed to him, and the benefit of all securities for the same (*l*); AND I direct, &c. [*as in Form* 8, mutatis mutandis].

Expense of limited probate.

(*i*) It is advisable to direct on whom the expense of a limited probate is to fall, as the point may otherwise occasion dispute. The "general" executors are the personal representatives for the purpose of sect. 10 of the Trustee Act, 1893: see *Re Parker*, [1894] 1 Ch. 707; *Re Cohen's Executors, &c.*, [1902] 1 Ch. 187.

(*k*) For form of bequest of a business or share in a business, and ancillary clauses, see *post*, p. 495, Forms 1 and 2. Where a testator's business is bequeathed to one or more, as trustees, who are appointed special executors, an express power to compromise, &c. should be inserted in the will: see *post*, p. 497, Form 4.

(*l*) Sect. 30 of the Conveyancing Act, 1881, does not purport to affect the devolution of the mortgage debt, so that it would seem that a special executor may be appointed for this purpose, but it seems doubtful whether

APPOINTMENT OF EXECUTORS, &c.

Bequest of leaseholds. Legatee of leaseholds to be limited executor.

10. I GIVE AND BEQUEATH to [*name*], of, &c., my leasehold messuage at ——, with the appurtenances, in my occupation at the date of this my will, and all the term and interest I shall have therein at my decease. AND I appoint the said [*name*], executor of this my will, so far as relates to the said leasehold messuage and premises, but not in respect of any other part of my personal property and effects (*m*). AND I direct that the expense attending the limited probate to be taken out by the said [*name*] shall be paid out of my residuary personal estate [*or*, "by him"].

Literary executor.

11. I APPOINT [*literary executor*], of, &c., my executor in respect only of all my letters, manuscripts, and documents, and all copyrights and other rights and privileges relating thereto hereinafter bequeathed to him.

Executor as to letters, &c.

12. I BEQUEATH to [*legatee*], of, &c., all my letters, letter books, and papers (other than vouchers, accounts, account books, and the manuscripts of any treatises or works which I may be preparing for publication), and I appoint him executor in respect only of the same; AND I direct him to examine the same, and to destroy all such papers as he shall think ought not to be preserved, and particularly, &c.; AND I declare that it shall be at his absolute discretion (except as regards, &c.) to show the same, or any of them, or to disclose their contents to any other person.

Appointment of Public Trustee alone (*n*).

13. I APPOINT the Public Trustee a [custodian] trustee of this my will.

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any advantage would be gained by so doing, as the legal estate in the mortgaged property would apparently devolve on the general executors or executor, either alone or jointly with the special executor (a point which is not quite free from doubt), as being the "personal representatives" of the testator within the meaning of the section: see Hood and Challis, Conv. Acts, 2nd ed. 1884, p. 172; and see *post*, p. 491, note (*y*).

Convenience attending the creation of a limited executorship of leaseholds, &c.

(*m*) Where a leasehold estate or a legal chose in action is bequeathed specifically, it is convenient to constitute the legatee executor, *quoad* the subject of gift, for the purpose of clothing him with the rights, and of exempting the general executors from the risks incident to the representative character in regard to the property in question. As to the liability of the executors under the covenants in leases, see Key & Elph. 10th ed. vol. 2, p. 534, note (*a*).

(*n*) See the Public Trustee Act, 1906 (6 Edw. 7, c. 55). For the rules under the Act, see [1907] W. N. 329.

14. I APPOINT [*executors*], the executors, and together with the Public Trustee, the trustees of this my will. APPOINTMENT OF EXECUTORS, &c.

15. I DECLARE that the Public Trustee shall not be appointed a trustee or custodian trustee of this my will. Appointment of Public Trustee with others.

16. I APPOINT the —— Bank, Limited (hereinafter called "the bank"), executors and trustees of my will, and I declare that the bank may recoup themselves out of any moneys forming part of my estate in respect of all costs and expenses incurred by them in the administration of my estate or the execution of the trusts of my will, with interest at the rate of 5 per cent. per annum from the time of disbursement until recoupment thereof as aforesaid; AND FURTHER, that the bank shall be entitled to remuneration, free from all death duties, in accordance with the scale of fees fixed and in use by the bank at the date of my will. Exclusion of Public Trustee (*o*). Appointment of a bank to be executors and trustees (*p*).

17. I APPOINT [*name*], of, &c., to be executors of this my will in respect of my property in ——; AND I devise and bequeath to him all such property real and personal upon trust, to sell, get in, and convert the same into money, and to remit the proceeds to my general executors hereinbefore appointed. Appointment of special executor for property in a colony.

18. I APPOINT my trustees to be guardians of my infant children Appointment of guardians (*q*).

(*o*) See Public Trustee Act, 1906, s. 5 (3).

(*p*) See *In the goods of Hunt*, [1896] P. 288; and *Re Richards*, [1901] 2 Ch. 399. As to a company acting as custodian trustee, see Public Trustee Act, 1906, s. 4 (3).

(*q*) Under the Guardianship of Infants Act, 1886, s. 2, on the death of the father of an infant, the mother, if surviving, shall be the guardian of such infant, either alone, where no guardian has been appointed by the father, or jointly with any guardian appointed by the father. Where no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court may, if it shall think fit, from time to time, appoint a guardian or guardians to act jointly with the mother. It will be observed that there is no provision for the cesser of the mother's guardianship on marriage. In the event of her marriage, the Court will only interfere where, having regard to the real benefit of the infant, it ought to do so: *Re X.*, [1899] 1 Ch. 526.

APPOINTMENT OF EXECUTORS, &c.

[to act jointly with my wife during her life, and after her decease, with any guardians or guardian appointed by her].

Wife guardian during widowhood—then trustees or trustee for the time being.

19. I APPOINT my wife, [*name*], sole guardian of the persons and estates of my children during her widowhood; and after the death or marriage of my wife, I appoint the said [*executors*], and the survivors and survivor of them, or other the trustees or trustee for the time being of my will, guardians or guardian of my children during their respective minorities, and in case of my wife's marriage, jointly with her during the remainder of her life.

Guardian with power to appoint successor (*r*).

20. I APPOINT [*guardian*], of, &c., during his life, and after his death such person or persons as he shall by will appoint or nominate to be guardian or guardians of my children during their respective minorities.

Guardian with power to substitute.

21. I APPOINT [*guardian*], of, &c., and [*guardian*], of, &c. [*or*, the said [*trustees*], and the survivors and survivor of them], to be the guardians of my son, [*name*], during his minority; and in case of the death of either of them, the said [*guardians*], during such minority, then I authorise and empower the survivor of them

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By sect. 3, sub-sect. 1 of the Act, the mother may appoint a guardian or guardians of her infant children after the death of both parents; and if both father and mother appoint guardians, they shall act jointly. By sub-sect. 2, the mother may by deed or will provisionally nominate a guardian or guardians to act jointly with the father, and such appointment may, on evidence of the father's unfitness, be confirmed by the Court: *Re G.*, [1892] 1 Ch. 292.

By sect. 4, every guardian under this Act is to have all the powers of guardians appointed under the Act 12 Car. 2, c. 24. By sect. 6, the Court has power to remove guardians "appointed or acting by virtue of this Act," and appoint another guardian in his or her place.

This Act does not affect the rule that the child is to be brought up according to the religious faith of its father, and the mother as statutory guardian is bound to observe this rule: *Re Scanlan*, L. R. 40 Ch. D. 200. As to where the Court will depart from this rule and interfere for the benefit of the child, see *Re Newton*, [1896] 1 Ch. 740; *Re Nevin*, [1891] 2 Ch. 299; *Re McGrath*, [1893] 1 Ch. 143; *Re W.*, [1907] 2 Ch. 557.

(*r*) See, as to delegation by the father to another person of the power to appoint guardians after his death, 12 Car. 2, c. 24, ss. 8 and 9; and *In the goods of Parnell*, L. R. 2 P. & M. 379.

to appoint such person as he shall think fit to be a guardian jointly with himself of the said [*son*] in the place of the guardian so dying. APPOINTMENT OF EXECUTORS, &c.

22. I APPOINT my sister, [*name*], and the trustees or trustee for the time being of this my will, guardians and guardian of each son of mine during his minority, and of [*illegitimate daughter*] (*s*), and every other daughter of mine during minority and until marriage. Guardians of children, including an illegitimate child.

23. I DEVISE all hereditaments of copyhold or customary tenure which at my death shall be vested in me as tenant on the court rolls of any manor upon any trusts or by way of mortgage, and of which I shall at the date of my death have power to dispose by will unto the said [*executors*] and their heirs, upon the trusts or subject to the equity of redemption which shall at my death be therein subsisting or capable of taking effect respectively: AND I declare that all moneys secured on any such mortgage shall be considered as and form part of my general personal estate; [PROVIDED ALWAYS, and I hereby further declare that it shall be lawful Devise to executors of trust and mortgage estates in copyhold and customary lands (*t*). Power for executors to

(*s*) With respect to the illegitimate child, this appointment of guardians will be invalid, as the testator does not stand in a recognised parental relation to her: *Sleeman* v. *Wilson*, L. R. 13 Eq. 36. The nomination, however, is not without use, as the Court will generally appoint to the guardianship persons nominated by a putative father: *Ward* v. *St. Paul*, 2 B. C. C. 583; *Peckham* v. *Peckham*, 2 Cox, 46; *Chatteris* v. *Young*, 1 J. & W. 106. As to appointment of guardians of illegitimate children.

(*t*) As regards freehold estates or interests of inheritance or limited to the heir as special occupant, devises of trust and mortgage estates are now simply inoperative: see sect. 30 of the Conveyancing Act, 1881. But by the Copyhold Act, 1894, s. 88, it is enacted that "Section thirty of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court rolls on trust or by way of mortgage." It is therefore advisable still to insert in wills devises of trust and mortgage estates, as regards copyholds and customary lands, so that in case the testator dies having any such estates vested in him as sole trustee or mortgagee, any copyholds comprised in a settlement or mortgage may by virtue of the devise vest in the executors, who are the persons on whom the freeholds so comprised will devolve by the operation of the statute. It may be observed that the devise will often be nugatory as regards *mortgage* estates in copyholds, &c., inasmuch as the admittance of mortgagees as tenants on the court rolls is not usual.

APPOINTMENT OF EXECUTORS, &c.

for any one [or two or three] of the said [*executors*] to disclaim the devise lastly hereinbefore contained, and, in such case, the copyhold and customary hereditaments hereinbefore devised shall vest in such one [or more] of them, the said [*executors*], as shall not disclaim such devise, to the exclusion of such of them as shall disclaim the same; PROVIDED ALWAYS, that no such disclaimer shall be deemed to be a renunciation of the office of executor of this my will or any codicil thereto, or to be a disclaimer of any estates, interests, trusts, powers, or authorities thereby vested or reposed in, or conferred on the said [*executors*], or any of them, as executors and trustees of this my will, or in anywise to affect any such estates, interests, powers, or authorities, save as regards the right to admittance as tenant or tenants on the court rolls of any manor of which any such copyhold or customary hereditaments are holden].

disclaim the devise (*u*).

Proviso that such disclaimer shall not affect other powers, &c. of executors disclaiming.

DIRECTIONS AS TO FUNERAL, PAYMENT OF DEBTS, ETC.

Direction respecting funeral.

1. I DESIRE that I may be buried in as simple and inexpensive a manner as possible in my family vault at —— [*or*, in some cemetery or churchyard near the place of my death].

The same.

2. I DIRECT that the expense of my funeral shall not exceed £——.

Charge of debts, &c. on real estate, in exoneration of personalty.

3. I CHARGE my freehold and copyhold estates [at ——, in the county of ——] with the payment of my funeral and testamentary expenses, debts (including debts secured by mortgage) and legacies hereinafter bequeathed in exoneration of my personal estate (*x*).

(*u*) This power may be inserted if it is desired to avoid the expense as regards fees, &c. of the admission of several persons as tenants on the court rolls.

Effect of charge of debts.

(*x*) A charge of debts empowers the devisees in trust of the lands charged, or, if there be no such devisee, then the executors (but not an administrator: *Re Clay and Tetley*, 16 Ch. D. 3), to raise the amount required by sale or mortgage of the lands: see 22 & 23 Vict. c. 35, ss. 14—18.

DIRECTIONS AS TO FUNERAL, DEBTS, &c.

4. I CHARGE all my real estates not hereinafter specifically devised, equally and *pari passu* in the first instance with my personal estate, with the payment of my debts (*y*).

Charge of debts.

5. I DIRECT that the debt of £—— owing by me to [*mortgagee*], of, &c., on the security of a mortgage, dated, &c., and made, &c., on my farm and lands at ——, in the county of ——, and all interest due thereon up to the time of payment of the same sum, shall be paid out of my residuary personal estate, in exoneration of the mortgaged premises.

Direction for payment of mortgage debt out of personalty (*z*).

6. I CHARGE all the legacies hereinafter [*or*, hereinbefore] bequeathed on my real estate situate at ——, hereinafter devised to [*devisee*] in aid of my personal estate in case the same should prove to be deficient.

Charge of legacies on specific real estates.

A charge of debts and legacies extends to lands specifically devised (*Mannox* v. *Greener*, L. R. 14 Eq. 456); but a charge of legacies only is confined to residuary realty: *Conron* v. *Conron*, 7 H. L. C. 168.

Sect. 2 of the Land Transfer Act, 1897, makes it unnecessary in the case of a testator dying after 1897 to have recourse to the above-mentioned sections of 22 & 23 Vict. c. 35, except in the case of copyholds or customary freeholds where the testator was tenant on the court rolls.

But the express charge of debts and legacies is not nugatory, since sub-sect. (3) of sect. 2 of the L. T. Act, 1897, provides that nothing therein contained shall affect the order in which real and personal assets are now applicable in or towards payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies: see *Re Balls*, [1909] 1 Ch. 791; *Re Kempster*, [1906] 1 Ch. 446.

An express power to raise money on mortgage for payment of debts, &c. will be found *post*, at p. 538, Form 34.

(*y*) Where it is intended to exonerate the personalty, either altogether or in part, from its primary liability to pay debts, it is necessary to do so by an express charge of the property intended to form the fund for payment of debts, &c.

Necessity of explicitness as to personalty being exempt from debts and legacies.

A direction to pay debts is unnecessary, as such a direction merely amounts to a general charge of debts on the real and personal estate, in the order in which such property is chargeable by law, independently of any direction. As to the distinction between a "direction" and a mere "authority" to pay debts, see *Re Head's Trustees and Macdonald*, L. R. 45 Ch. D. 310.

(*z*) See Real Estate Charges Act, 1854.

DIRECTIONS AS TO FUNERAL, DEBTS, &C.

SPECIFIC BEQUESTS (*zz*).

Wearing apparel to servant.

1. I BEQUEATH my wearing apparel to my servant, [*name*], if he shall be in my service at the time of my death.

Wearing apparel among servants.

2. I DIRECT that my wearing apparel be distributed among such of my servants, and in such manner as my executors shall, in their uncontrolled discretion, think proper.

Wearing apparel, trinkets, &c.

3. I BEQUEATH all my wearing apparel, watches, jewelry, trinkets, dressing-cases, and articles of personal decoration or ornament, to [*legatee*], for her own absolute use and benefit.

Letters, &c. to wife (*a*).

4. I BEQUEATH to my wife all my letters, copies of letters, correspondence, papers, memoranda, manuscripts, and writings, [except documents of title, securities for money, vouchers, and accounts, relating to the property or rights of my heirs, executors, trustees, devisees, or legatees, or any of them], and I request my wife to examine all my said letters, copies of letters, correspondence, papers, memoranda, manuscripts, and writings, and to destroy such of the same as she shall in her absolute discretion consider ought not to be preserved, and I declare that it shall be at her like absolute discretion whether or not she shows any of the same, or the contents thereof, to any other person.

Manuscripts, copyright, &c. to wife.

5. I BEQUEATH to my wife all my published works, and all the manuscripts of my unpublished works, together with all my copyright and all other rights and privileges in my published works, and full right to publish or complete the publication of my unpublished works (*b*).

(*zz*) If it is intended that a specific legacy is to be free of legacy duty, the words "free of duty" should be added to the gift: see Legacy Duty Act, 1796, ss. 6, 24; otherwise the payment of legacy duty in respect of a specific legacy falls upon the legatee. Though, for purposes of ascertaining the full value of the estate a specific legacy is included in the account, it is not liable to pay its proportionate part of the estate duty, as such duty, being a testamentary expense, is payable out of residue. It should be noted that the upkeep of a specific legacy until it is assented to falls upon the legatee: see K. & E. 10th ed. vol. 2, p. 820, note (*a*).

(*a*) For form of bequest of letters, &c. to special executor, with directions for their destruction, see *ante*, p. 474, Form 12.

(*b*) Copyright being personal property may be the subject of bequest.

SPECIFIC BEQUESTS.

6. I BEQUEATH to my elder son, [*name*], my gold watch, chain, and appendages, and jewelry and personal ornaments. Watch, &c.

7. I BEQUEATH to my younger son, [*name*], all my horses and carriages, and motor cars, with the harness, saddlery, trappings, and other accessories belonging thereto. [*Or*, any one of my carriages, and any one pair of my horses [together with one set of double harness, and one set of single harness for the same, to be selected by him respectively]] [*or*, any one of my motor cars, with the accessories belonging thereto.] Horses and carriages, &c.

8. I BEQUEATH to each of my friends, [*legatees*], —— dozen of my best wine, to be selected by them in the order in which they are herein named. Wine.

9. I BEQUEATH all my coins, ancient sculptures, original inscriptions, and copies of inscriptions, manuscripts, and other antiquities, and such of my printed books as they may consider useful, to the Trustees of the British Museum, to be deposited and kept in the department of antiquities or the public library there, as the case may be. Coins, &c. to British Museum.

10. I BEQUEATH to my son, [*name*], my collection of minerals and fossils, with the cabinets in which they are placed, requesting, but not insisting, that he will, unless he see reason to the contrary, leave them at his death to his brother, [*name*]. Minerals, &c., with a request as to their disposition.

11. I BEQUEATH to my eldest son, [*name*], absolutely all my books and manuscripts; AND I request the said [*name*], but not so as to impose any legal obligation on him, or to create any trust or obligation in favour of any other person, to carry out my wishes as expressed in a letter addressed to the said [*name*], and deposited with my will, which letter I declare not to be testamentary. Bequest of books, &c., with a provision avoiding a precatory trust.

12. I BEQUEATH to my wife, [*name*], all my music-books, and music, printed or in manuscript, and also such of my printed and other books, not exceeding in the whole 100 volumes, as she shall select. AND I bequeath the remainder of my books, whether printed or manuscript, except books of account, unto such son of mine living at my death as shall first attain the age of twenty-one years. Books, &c., part to wife, remainder to son at twenty-one.

SPECIFIC BEQUESTS.

Books on payment of two-thirds of the value.

13. I GIVE to my son, [*name*], my library of books, including all additions thereto (*c*), or such part thereof as he shall select, on condition that he pay to my executors two-thirds of the value thereof, or of such part thereof as he shall select, such value to be ascertained by valuers, one to be appointed by my executors and one by my said son, or by any other means which shall be agreed on between my said son and my executors.

Household effects, &c. to wife.

14. I BEQUEATH to my wife, [*name*] (*d*), all my household furniture, pictures of every description in frames, plate, plated articles (*e*), linen, china, glass, musical instruments, books, watches, jewelry and trinkets, motor cars, horses and carriages, and the equipage and furniture belonging thereto, cows, poultry, and other live stock, greenhouse and other plants in pots, gardening and husbandry implements, domestic animals, fuel, wines, liquors, and consumable stores, and other the household effects not hereinbefore bequeathed, and which shall be in or about the house in which I shall be residing at the time of my death, or in the garage, stables, coach houses, or outbuildings thereof. AND I declare that the last mentioned bequest shall comprise all effects, though not strictly household, which are applicable to personal or domestic use, ornament, occupation, or diversion, and are not hereinbefore otherwise specifically bequeathed (*f*).

(*c*) The gift of "my library" will carry books bought after the date of the will: *All Souls Coll.* v. *Codrington*, 1 P. Wms. 597.

As to naming the testator's wife.

(*d*) It is proper to mention the wife's name, although the will would necessarily be revoked by a second marriage; because it may happen that the parties have never been lawfully married, in which case the name will assist in identifying the person intended.

Misdescription of character of legatee.

The misdescription as wife of the testator of a named person to whom he was not lawfully married will not avoid the legacy: *Schloss* v. *Stiebel*, 6 Sim. 1; *Re Pitt's Will*, 27 Beav. 576; *Anderson* v. *Berkley*, [1902] 1 Ch. 936.

(*e*) Plated articles are not included in the word "plate": *Holden* v. *Ramsbottom*, 4 Giff. 205.

As to bequests of household furniture, &c.

(*f*) It is of no inconsiderable importance to choose the most appropriate words for describing those articles of personalty which are often bequeathed separately from the general estate, such as household furniture, &c., since many questions arise on such bequests; though, as they relate to matters of small value, comparatively few of them become subjects of judicial consideration. To this, probably, we must ascribe the fact that

SPECIFIC BEQUESTS.

15. I BEQUEATH to my eldest son, [*name*], all articles and effects of household, domestic, or personal use, ornament, occupation, or diversion belonging to me, and not hereinbefore otherwise specifically bequeathed. [AND I suggest that he shall distribute the same amongst my children (including himself) in such shares and manner as he shall think proper, but I expressly declare that this suggestion shall not be construed to create a trust in favour of my children, or in any manner to abridge or restrict the absolute property of my said son, [*name*], in the said articles and effects.]

The same, to son. Short form with suggestion not to be deemed a trust.

16. I BEQUEATH to —— all the chattels and effects which shall, at my death, be in or about my dwelling-house at —— aforesaid [*or*, in or about any house I may then reside in], other than money or securities for money (*g*), and deeds and documents of title.

17. I BEQUEATH all my plate [*or*, all articles, &c., *as in last form*] unto my children, [*names*], to be divided among them or such of them as shall be living at my death, in equal shares; AND in case any dispute should arise respecting the distribution of the same, my executors shall select and determine the specific articles to be taken by each legatee under this bequest.

Plate [or household effects] to children.

18. I GIVE to my wife [the use, during her widowhood, of] such articles (not exceeding in the whole the value of £——), as she shall within the first three months after my death select from my household furniture and household effects, such value to be determined by my trustees.

Articles to be selected by wife.

19. I GIVE to my daughter, [*name*], all the household furniture and effects which at the time of my death shall be ordinarily used

Furniture in certain rooms.

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less attention has been paid to the framing of such gifts than to many other clauses of rarer occurrence. As to what passes under the words "household furniture," "household effects," &c., see *Re Seton Smith*, [1902] 1 Ch. 717.

(*g*) As to whether choses in action pass under a gift of "effects in the house," see *Re Craven*, 100 L. T. 284; *Re Robson*, [1891] 2 Ch. 559. "Securities for money" include Government stock, but not bank stock or other stock on which the dividends are variable (*Bescoby* v. *Pack*,

Securities for money.

SPECIFIC BEQUESTS.

by her in the bed-chambers, nursery, and sitting-room then occupied by her and her children and her attendant, in my house.

Specific articles by reference to schedule (*i*).

20. I BEQUEATH the several articles mentioned in the schedule hereto to the several persons whose names are set opposite to such articles respectively in the second column of the same schedule.

Request to executors to distribute effects by reference to separate paper (*k*).

21. I REQUEST the executors of this my will to distribute all articles and effects which may be specified in any list or memorandum signed by me, and deposited with this my will, or which may be left by me at my death, in accordance with any directions therein contained; but I declare that any such list or memorandum shall not be deemed to have any testamentary character or effect by way of creating any trust, or otherwise howsoever.

Use of leasehold house and furniture to wife for life (*l*).

22. I BEQUEATH to my wife the use of [such leasehold house as I shall reside in at my death, and of] my household furniture, household linen, plate, plated articles, china, glass, books, pictures, prints, musical instruments, and other effects of a like nature [which shall at my death be in or about such house], during her life [widowhood], if she shall so long, at her own cost, keep the same [house and] articles in good repair and condition (reasonable wear

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1 S. & St. 500; *Ogle* v. *Knipe*, L. R. 8 Eq. 434); nor, it has been held, an I.O.U., which is merely an acknowledgment of a debt (*Barry* v. *Harding*, 1 J. & L. 475); but will include unpaid purchase-money: *Callow* v. *Callow*, 42 Ch. D. 550. And it has been held that "property invested in British or foreign funds, bonds, or *securities* of any description" does not include canal or railway shares: *Hudlestone* v. *Gouldsbury*, 11 Jur. 464; 10 Beav. 547; *Turner* v. *Turner*, 20 L. T. 30. But in *Re Rayner*, [1904] 1 Ch. 176, and *Re Gent and Eason's Contr.*, [1905] 1 Ch. 386, it was held that "securities" meant "investments," and included stocks and shares as well as mortgage securities.

(*i*) The signature of the testator and attestation must, of course, be placed at the foot or end of this schedule: see Wills Act, 1837, s. 9.

(*k*) This request is of no legal value, as a separate document cannot be incorporated in a will unless it is in existence at the date of the will. It must also be borne in mind that executors acting in accordance with this request, without obtaining the consent of the residuary legatee, run some risk of being called to account as to their disposal of the articles.

(*l*) By omitting the words in brackets, this form can be used for a gift of the use of furniture for life, without a house.

and tear only excepted), [and insured in the names of my trustees to their full value from damage by fire], [and pay the rent and perform the covenants to which the lessee of the said house may be liable]. I direct that an inventory of the said articles whereof my wife is to have the use shall be taken, at the expense of my estate, as soon as convenient after my death, of which one copy shall be kept by my wife, and the other by my trustees, who are to determine [the amount of insurance to be made by my wife, and also], in case of dispute, what articles are included in this bequest; And I exonerate my trustees from all duty and responsibility in respect of the custody or preservation of the said furniture and effects included in the bequest after delivery thereof to my said wife.

Inventory to be taken.

23. I direct that my wife shall during her life keep the said articles in good repair and condition (reasonable wear only excepted), and insured against fire to the full value thereof (such value to be assessed by my trustees), in some respectable office, in the names of my trustees, and deliver the receipts for each premium of insurance to my trustees, within one week after the same shall become payable; in default whereof, it shall be lawful for my trustees to repair or replace such of the said articles as shall be damaged, destroyed, or lost, or (as the case may be) to effect or keep on foot such insurance, and retain or recover the costs of such repairs, purchases, or insurance respectively, out of or by sale of any income, capital, or property given to my wife by my will.

Wife to repair and insure;

in default, trustees may repair and insure.

24. I declare that it shall not be necessary to take any inventory of the said furniture and effects, and that my trustees shall not be concerned to see to the insurance thereof, or be liable for any loss or damage thereof from any cause whatever.

Declaration dispensing with inventory.

25. I declare that it shall be lawful for my said wife at any time, with the consent of my trustees, to sell any part of the said furniture and effects, and out of the proceeds of such sale to replace such of the said articles as shall be sold, damaged or destroyed, with others of the like kind.

Power of sale.

26. And after the death [*or*, re-marriage] of my said wife, upon trust that my trustees shall sell the furniture and effects aforesaid,

Effects to be sold after

SPECIFIC BEQUESTS.

death of tenant for life.

in such manner as they shall think proper, and shall stand possessed of the moneys to arise by such sale or sales, upon the trusts hereinafter declared of and concerning the moneys to arise from the residue of my personal estate and effects hereinafter bequeathed. [*Add direction as to inventory, and authority to determine what articles are included in the bequest, Form* 22.]

Power for tenant for life to purchase.

27. I AUTHORISE and empower any person or persons for the time being entitled to the possession of the said articles of furniture and household effects to purchase the same from my trustees at a valuation to be made by a valuer to be appointed by my trustees [*or,* at the sum of £——]; AND I direct that the purchase-money for the same may be paid at such times, in such manner and with interest at such rate, or without interest, as my trustees shall think fit, and when so paid shall be added to my residuary personal estate.

Household effects for daughters while unmarried and living together; afterwards to be sold and divided.

28. I DIRECT my trustees to permit my two daughters, [*names*], so long as they shall both continue unmarried and shall live together, and after the marriage or death of either of them, the other of them, so long as she shall continue unmarried, to have the use of all my household furniture and household effects not hereinbefore specifically and effectually disposed of, and the consumption, so long as they shall last, of my consumable household stores; AND in case my said daughters, while both are unmarried, should cease to live together, or in case both of them should marry or die, then I direct the said household furniture and household effects to be sold, and the produce thereof to be divided equally between my said daughters, their executors, administrators, or assigns; AND in case either of my said daughters should die before me, and leave no child surviving me, then I give the whole of the said furniture and effects or the produce of the sale thereof to my other daughter, her executors, administrators, and assigns.

Plate, &c., as heirlooms, in strict settlement, where there is no realty (*m*).

29. I BEQUEATH all the gold and silver plate, books, book-cases, manuscripts, maps, bronzes, medals, statuary, framed and un-

(*m*) Forms of bequests of heirlooms by reference to limitations of realty in strict settlement will be found at the end of the common forms of "Devises in Strict Settlement," *post,* p. 620.

The forms given here in the text are intended to carry on the settle-

framed pictures, paintings, drawings, prints, and engravings, antiquities, jewels, minerals, fossils, specimens of natural history, Sèvres, Dresden, and ornamental china, and other articles of curiosity or vertu not otherwise specifically disposed of and of which I shall die possessed, to the said [*trustees*], their executors, administrators, and assigns, as heirlooms, [upon trust during the life of my said wife to permit the same to be used and enjoyed by her, and from and after her death,] in trust for my eldest son, [*name*], during his life, with remainder in trust for his first and other sons successively, according to priority of birth, who shall be living at his death, and shall have attained or shall attain the age of twenty-one years, or who shall die in the lifetime of my said son, [*name*], leaving a son or sons living at the death of my said son, [*name*]; And in such last case in trust for such grandson of my said son, [*name*], living at his death, as shall first attain the age of twenty-one years, absolutely; And in default of such issue, in trust for my second son, [*name*], for his life, with a like remainder in favour of his first and other sons and grandsons; And in default of such issue, in trust successively for every and any other my son or sons, who may hereafter be born, for their respective lives, with like remainders over in favour of their respective first and other sons and grandsons, with the like priorities, and in the like events respectively; And in default of such issue, in trust for all my daughters or any my daughter who shall be living at my death, and the issue of any my daughters or daughter who shall have died during my life leaving issue living at my death, absolutely, and if more than one in equal shares, but the issue of any daughter or daughters who shall have died during my lifetime, to take only the share to which their mother would have been entitled, if she had survived me; with remainder on failure of all the trusts or limitations hereinbefore contained of the said heirlooms, in trust for [*ultimate legatee*], of, &c., absolutely. And I direct an in-

SPECIFIC BEQUESTS.

Inventory.

ment of heirlooms apart from real estate, so far as may safely be done. It will be seen that the trusts extend in certain events to great-grandchildren of the testator, but such issue, in order to take, are expressly required to be *in esse* at the death of a son of the testator, who must necessarily be a life in being at the time of the testator's death. Of course, this form may be adapted so as to create successive trusts in favour of female issue. The rule against a "possibility on a possibility" does not apply to personalty: see *Re Bowles,* [1902] 2 Ch. 650.

SPECIFIC BEQUESTS.

ventory to be made of the articles hereinbefore mentioned and specifically bequeathed as heirlooms, and that there shall be two copies of such inventory, both of which shall be signed by each tenant for life of the said trust premises upon receiving possession of the said trust premises, and one of which shall be kept by such tenant for life for the time being, and the other by my trustees; AND I declare that my trustees shall not be concerned during the lifetime of any tenant for life for the time being entitled to the use and enjoyment of the said articles to see to the insurance or preservation thereof, or be liable for any loss or damage that may happen thereto from any cause whatever.

Bequest of ready money to wife.

30. I BEQUEATH unto my wife, [*name*], absolutely, all my ready money (*o*), including money [to an amount not exceeding £——] in the hands of my banker, or any agent.

Share of law books, office furniture, papers, &c., to testator's son (with whom he was in partnership).

31. I GIVE to my son, [*name*] (with whom I have been for many years in partnership in the profession or business of solicitor), for his absolute use and benefit, all my share and interest in the law books, stationery, office furniture, and books of account, and also in the deeds, documents, papers, and writings, belonging to or in the custody of the said firm at the time of my death. I also give to my said son, for his absolute use and benefit, all the deeds, documents, papers, and writings collected by me in the course of my professional practice, or which shall

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Ready money, &c.

(*o*) "Ready money" will generally include money at call at the testator's bankers, but not money in the hands of an agent (*Parker* v. *Marchant*, 1 Phil. 356; *Montresor* v. *Montresor*, 1 Coll. 693), nor money on deposit with testator's bankers and subject to more than twenty-four hours' notice of withdrawal: *Re Wheeler*, [1904] 2 Ch. 66; *Re Price*, [1905] 2 Ch. 55. "Money in hand which I may have for current expenses" has been held to pass dividends due on stock in the funds and money in the hands of an agent: *Vaisey* v. *Reynolds*, 5 Russ. 12; *Fryer* v. *Rankin*, 11 Sim. 55. See *Glendening* v. *Glendening*, 9 Beav. 324.

"Property" at bank.

Where a testator, having at his bank a cash balance and certain share certificates, some inscribed, and the remainder transferable by delivery, bequeathed to A. a moiety of his "property" at the bank, it was held by Chitty, J. (36 Ch. D. 473), that a moiety of the cash balance only passed; but this decision was reversed on appeal, and it was held that the bequest included half the certificates: *Re Prater*, 37 Ch. D. 481.

be in my custody or possession on my sole and separate account at the time of my death, subject nevertheless to the paramount right or claim (if any) of any other person or persons otherwise to regulate and dispose of the custody thereof.

Farming stock to devisee of farm.

32. I BEQUEATH all my farming stock, both live and dead, [growing and other crops (*p*),] and all household and farming effects, and consumable stores and provisions whatsoever, which shall be in or about any freehold, copyhold, or leasehold house and farm, to which at the time of my death I shall be entitled, and which shall then be occupied by me or any of my sons, or by any bailiff, servant, or other person, for my use, to the person who, at the time of my death, shall first become entitled under the limitations of this my will to the house and farm in or about which the same shall be.

Farming stock, &c., at a particular farm.

33. I BEQUEATH unto [*legatee*], his executors, administrators, and assigns, for his and their absolute use and benefit, all the term, estate, and interest to which I shall be entitled at the time of my death in the farm and premises, and all the farming stock, both live and dead, growing and other crops, and household and farming furniture, utensils and effects, and consumable stores and provisions, which at the time of my death shall be in, upon, or about the farm and premises at ——, now held by me under lease from ——, Esq.

General bequest of stock and Government securities (*q*).

34. I BEQUEATH to [*legatee*], of, &c., all stock in the public funds and other Government securities of Great Britain, of which I shall die possessed.

"Farming stock."

(*p*) Growing crops will pass under the description of "farming stock": *Re Roose, Evans* v. *Williamson,* 17 Ch. D. 697; overruling on this point *Vaisey* v. *Reynolds,* 5 Russ. 12. See also *Blake* v. *Gibbs,* 5 Russ. 13, n.; *Rudge* v. *Winnal,* 12 Beav. 357.

Suggestion as to stock legacies.

(*q*) In bequeathing stock legacies it should be distinctly shown whether they are intended to be specific or general, or, in other words, whether the subject of gift is stock then belonging to the testator or any stock that can be procured. The bequest in the text is evidently of the latter description; and, in general, the intention is best expressed by framing the legacy in this manner, because by making it specific the testator is subjected to the necessity of altering his will at every change of his securities, or of adding a proviso for ademption as in Form 36. Explicit-

SPECIFIC BEQUESTS.

Bank Stock and New Stock, to trustees.

35. I BEQUEATH unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same, the sum of £—— Bank Stock, of which I am now (*r*) on this —— day of ——, 19— (*s*), possessed; and also the sum of £——, $2\frac{1}{2}$ per cent. Consolidated Stock (*t*) [part of a larger sum of like stock], this day standing in my name.

Proviso in case of ademption.

36. PROVIDED ALWAYS, that if I should not be possessed of the whole or part of the said stock at the time of my death, then in lieu of the whole, or so much thereof as shall be deficient, I bequeath to the said [*legatee*] [*or*, to the said trustees], the sum of £—— for every 100*l.* such stock, and so in proportion for any less amount than 100*l.* [to be held by them upon the trusts aforesaid], such sum to be payable in priority to any general pecuniary legacy bequeathed by this my will.

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ness on the point is important to prevent litigation. If the legacy is to be specific it should be expressed as in Form 35.

A gift of "all the stocks . . . and other securities standing in my name at my decease" was held not to include foreign bonds to bearer: *Re Mayne*, [1914] 2 Ch. 115.

(*r*) As to the force of the word "now," see *Doe* d. *York* v. *Walker*, 12 Mee. & W. 591; *Anther* v. *Anther*, 13 Sim. 422; *Cole* v. *Scott*, 12 Jur. 591; *Hutchinson* v. *Barron*, 6 H. & N. 583; *Wagstaff* v. *Wagstaff*, 8 Eq. 229; *Everett* v. *Everett*, 7 Ch. D. 428; *Dickinson* v. *Dickinson*, 12 Ch. D. 22; and *Re Portal and Lamb*, 30 Ch. D. 50, which decides that sect. 24 of the Wills Act, 1837, still leaves open, as a matter of construction, the question whether the testator intended to pass property under the specific or residuary gift in his will. See also *In re Champion*, [1893] 1 Ch. 101; 62 L. J. 372.

(*s*) The mention of the date will prevent any question from arising as to whether the word "now" means the date of the execution of the will or the date of the testator's death, from which the will speaks. This question will not arise if there is an ademption clause, which should always be inserted in the case of a specific legacy of this nature, in the absence of instructions to the contrary. Stock in the funds is not money; and legacies of stock, whether specific or general, are not properly within the description of "pecuniary legacies." Thus, where a testator directed that the duty on the pecuniary legacies given by his will should be paid out of his general estate, the direction was held not to apply to a general bequest of Consols: *Douglas* v. *Congreve*, 1 Keen, 41. See *Gaskin* v. *Rogers*, L. R. 2 Eq. 284.

Legacies of stock are not pecuniary.

(*t*) As to the description of this stock, see the National Debt Conversion Act, 1888, s. 2, sub-s. 4.

SPECIFIC BEQUESTS.

Shares in a company.

37. I BEQUEATH to [*legatee*], absolutely, five of my shares in the —— Company; AND if I should not be possessed of so many shares at the time of my death, I bequeath to him, in lieu of each deficient share, the sum of £—— sterling.

Provision in case of ademption.

Policies of life insurance, &c. (*u*).

38. I BEQUEATH unto [*legatee*], his executors, administrators, and assigns, absolutely, all policies of insurance on my own life [or any other life or lives] to which I shall be entitled at the time of my death, and all moneys, bonuses, and additions secured by or to be received in respect of the same policies respectively. [AND I declare that any moneys which shall become payable in respect of any of the said policies in my lifetime, and shall not be actually received by me, shall be included with them in this bequest.]

Bond debt.

39. I BEQUEATH to [*legatee*] all the principal and interest moneys which shall be owing to me at my death on the bond of [*obligor*], and also the said bond and the full benefit thereof (*x*).

Provision in case of payment.

[AND in case there should not be owing on the said bond at my death for principal, or principal and interest, the full sum of £——, I direct that the deficiency shall be made up to the said [*legatee*] out of my personal estate.]

Mortgage debt (*y*).

40. I BEQUEATH to [*legatee*], absolutely, all the principal and interest moneys which at the time of my death shall be owing

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(*u*) It may be advisable to appoint the legatee of the policies to be special executor in regard to them: see *ante*, p. 473, Form 7.

Arrears of interest on debt.

(*x*) A gift of a bond, or of the money owing on a bond, will, unless restrained by the context, carry arrears of interest due at the testator's death: *Harcourt* v. *Morgan*, 2 Keen, 274; *Kent* v. *Tapley*, 11 Jur. 940. And a bequest of a mortgage seems to admit of the same construction. But a bequest of the "sum of 200*l.*" secured by a mortgage, or of "300*l.* due upon a bond," will not pass arrears of interest: *Roberts* v. *Kuffin*, 2 Atk. 112; *Hawley* v. *Cutts*, 2 Freem. 24. It may be advisable to appoint the legatee of the bond special executor in respect thereof: see *ante*, p. 473, Form 9.

(*y*) The legatee of the mortgage debt may, if desired, be made special executor in respect thereof (*ante*, p. 473); but this would not make them "personal representatives" of the testator for the purpose of sect. 30 of the Conveyancing Act, 1881 (see *Re Parker*, [1894] 1 Ch. 707); and it would seem impossible to frame any form of testamentary disposition

SPECIFIC BEQUESTS.

or accruing due to me by [*mortgagor*], of, &c., on a mortgage for the sum of £—— [and further advances], of [copyhold and leasehold] hereditaments [and property], situate at ——. And in case the said mortgage debt of £——, or any part thereof, should be paid off in my lifetime, then, in lieu thereof, I give to the said [*legatee*] the sum of £——, or such smaller sum as shall be equal to the amount so paid off, to be paid to him out of my general personal estate. [And I hereby devise [and bequeath] All the hereditaments [and property of whatever nature or tenure] comprised in the said mortgage, unto and to the use of [*legatee*], his heirs [executors, administrators] and assigns [according to the nature and tenure thereof respectively], subject to the equity of redemption therein subsisting.]

Substitution of a pecuniary legacy in case of the mortgage being paid off in the testator's lifetime.

Devise of mortgaged estate to legatee of mortgage debt.

Legacy. Bond debt to go in satisfaction of it.

41. I bequeath to [*legatee*] the sum of £——, and I declare that the sum of £—— lent by me to him, on his bond, or so much thereof as shall remain unpaid at my death, shall be released to him in part satisfaction of this legacy, but that he shall not be accountable for any arrear of interest due at my death, nor shall any such arrear go in reduction of his said legacy; And I direct that the said bond shall be delivered up to be cancelled (*z*); And

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which can be safely relied upon to avoid the necessity for the legatee of a mortgage debt to obtain a conveyance of the legal estate in mortgaged freeholds from the executors, on whom, by sect. 30, the testator's mortgaged estates are made to devolve. Some conveyancers add to the bequest of a mortgage debt a devise of the mortgaged property as in the text, considering that the executor might pass the fee simple therein to the devisee by mere assent without conveyance: see Key & Elph. 10th ed. vol. 2, p. 823, n (*f*); and see also Wolstenholme's Conveyancing Acts, 10th ed. p. 101. But this expedient seems of doubtful efficacy; and it is not improbable that on a future sale of the property, objection might be taken to a title founded on an alleged transfer of a testator's mortgage estate in freeholds by means of a devise and assent of the personal representatives.

If the security is a term of years, it will pass to the legatee thereof by assent of the executors without assignment. And legal estates by way of mortgage in copyholds are now excluded from the operation of the 30th section of the Act of 1881, so that a devise of a mortgage estate therein is valid, *provided that the mortgagee has been admitted*, but not otherwise: see the Copyhold Act, 1894, s. 88.

Lapse in case of forgiveness of a debt.

(*z*) Where the testator released and forgave to A. B. the sum of 500*l*. owing on his bond, and directed the bond to be delivered up to him to

in case he die before me, I release his estate from the amount that shall be due on the said bond. SPECIFIC BEQUESTS.

42. I RELEASE the debt of £—— and interest owing to me by [*debtor*] on his bond, whether he survive me or not (*a*); AND I direct that the said bond shall be delivered up to be cancelled. Release of debt.

43. I BEQUEATH to [*debtor*] the amount of the principal and interest moneys which, at my death, shall be owing from him to me, on the mortgage security now held by me; AND I direct that the hereditaments comprised in the said mortgage shall be released and reconveyed accordingly, freed and discharged from all principal and interest moneys secured thereby, and from all claims and demands in respect of the same; AND in case he die before me, I release his estate from the amount that shall be due on the said mortgage security. Bequest of amount of mortgage debt to debtor.

44. I RELEASE to [*legatee*], whether he survives me or not, all principal and interest moneys whatsoever which may be owing to me from him at the time of my death; AND I direct that all or any bonds, bills, notes, or other securities for any such moneys, Release of all debts.

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be cancelled, it was held that the will did not import a general release; and that the benefit of the release lapsed by the death of the legatee before the testator: *Izon* v. *Butler*, 2 Price, 34.

(*a*) A testamentary release of a debt is subject to the claims of the testator's creditors; and being at law a specific legacy (*Re Wedmore*, [1907] 2 Ch. 277), is chargeable with duty. It is advisable, where such a course is consistent with the testator's policy, to release the debt by an instrument taking effect in his lifetime, which release will be effectual at law, and will exempt the amount of the debt from probate and legacy duty, if the release was made three years prior to the testator's death; otherwise duty would be payable under the Finance Act, 1894, s. 2 (1) (c), and Finance (1909-10) Act, 1910, s. 59. As to the extinction of a debt by the appointment of the debtor as executor, see *Strong* v. *Bird*, L. R. 18 Eq. 315; *Re Bourne*, [1906] 1 Ch. 697; *Re Pink*, [1912] 2 Ch. 528; and 54 Sol. J. 247; *Re Goff*, 58 Sol. J. 535.

Where a testator gives to his debtor the amount of the debt, that is a pecuniary legacy, liable to abatement if the assets are deficient. But a release of the debt in express terms is not subject to abatement, except as a specific gift: *Re Wedmore, sup.* As to abatement where debt is released.

SPECIFIC BEQUESTS.

shall be released and delivered up to the said legatee, or to his representatives, as the case may be.

Release of arrears of interest, and direction for payment of debt by instalments.

45. I RELEASE to [*legatee*], whether he survives me or not, all interest and arrears of interest which may be owing to me by him at the time of my death on the principal sum of £—— owing to me by him on his bond [*or*, on any principal moneys whatsoever which may then be owing to me by him]; AND I direct that my said executors shall accept payment of the said principal sum [*or*, sums] by yearly instalments, not exceeding £—— each, the first of such instalments to be paid on or before the expiration of twelve calendar months after my death.

Debt to be deducted from legacy.

Proviso as to legatee's bankruptcy.

46. WHEREAS my son, [*name*], now owes me the sum of £——; Now I hereby bequeath to my said son the sum of £——, but so that any money he may owe me at my death shall be deducted therefrom; PROVIDED ALWAYS, that if at the time of my death my son is an undischarged bankrupt, my executors shall retain so much of the said legacy as shall be equal to the full amount proveable as a debt in the bankruptcy, and the part so retained shall fall into and form part of my residuary estate (*b*).

BEQUESTS OF BUSINESS (*c*).

Stock in trade and goodwill.

1. I BEQUEATH unto [*legatee*] absolutely all the stock-in-trade, fixtures, machinery, plant, utensils, and effects employed in my trade or business of a ——, and also the goodwill of the said trade

(*b*) In an ordinary case the earlier part of this form is merely declaratory of the right of an executor to retain from the legacy payable an amount equal to the debt owing by the legatee; but if the debtor-legatee should be bankrupt at the death of the testator an executor would have no such right, apart from express provision (*Cherry* v. *Boultbee*, 4 My. & Cr. 442; 2 Keen, 319; *Hodgson* v. *Fox*, 9 Ch. D. 673; *Re Orpen*, 16 Ch. D. 202); and should the bankruptcy occur after the testator's death, the executor by proving would lose such right: *Stammers* v. *Elliott*, L. R. 3 Ch. 195.

(*c*) The place in which business clauses should be inserted in a will is a question of discretion and convenience, according to the circumstances of the particular case. Several of the forms here given may be accom-

BUSINESS.

or business, [And all my leasehold interest in the messuage, manufactory, offices, and buildings situate at —— aforesaid in which the said trade or business is carried on or used for the purposes of the same,] but not any money or debts which shall be owing to me in respect of the said trade or business. [*Or*, and also the benefit of all contracts subsisting in respect of the same trade or business, and all book and other debts and moneys owing to me in respect of the same, or standing to the credit of my business account at my bankers at my death; PROVIDED ALWAYS, that the said [*legatee*] shall to the satisfaction of the [*general*] executors of this my will sufficiently indemnify my general estate from all debts and liabilities owing or incurred by me in respect of my said trade or business, and, if they shall so require, shall enter into a bond or covenant in that behalf at the cost of my general personal estate.]

Exception of credits.

[Variation including contracts and credits (*d*).]

Proviso for indemnity.

2. IN EXERCISE of the powers vested in me under or by virtue of the articles of partnership of the firm of —— and Co., in which I am a partner, and of all other powers me in this behalf enabling, I hereby appoint my son [*name*], to be my successor in the said partnership business [*or*, I hereby introduce my son [*name*] into the said partnership (*e*)], with all rights, powers, privileges, and authorities, which I am in anywise enabled to confer upon him as such successor, subject, nevertheless, to the provisions of the

Appointment of successor in partnership, and bequest of share therein (*d*).

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panied by an appointment of the legatee of the business as special executor: see *ante*, p. 473. Where this is done, it may sometimes be convenient to commence the will with the appointment of the special executor, and then immediately to proceed to a bequest of the business with any ancillary clauses which may be required, and then to go on to appoint general executors and to dispose of the general estate by specific and pecuniary bequests, &c., and ultimately by a bequest of the residue; the instrument will thus be divided into two distinct parts, each dealing separately and completely with distinct subject-matter. If this course is not adopted, the appropriate place for the insertion of bequests of business with ancillary provisions seems to be at the end of the specific legacies.

Other provisions relating to business will be found in the precedents.

(*d*) As to the necessity of expressly mentioning book debts, &c., if intended to be included, see *Re Deller's Estate* (1888), W. N. p. 62; and as to mentioning the bank balance, see *Re Haigh*, 51 Sol. J. 343.

(*e*) The appointment of a successor in the partnership should follow the terms of the power contained in the article.

BUSINESS.

said articles of partnership, and to any other agreement for the time being in force in respect of the said partnership business; AND I bequeath unto my said son [*name*] absolutely all my share and interest in the said partnership business and in the capital, stock-in-trade, property, goodwill, credits, profits, and effects thereof, and all arrears of profits and other moneys owing to me by the said firm; [*or*, but not any arrears of profits or other moneys owing to me up to the day of my death by the said firm, which shall be paid by the said [*son*] to the [*general*] executors of this my will as and when the same shall be received by him;] he, the said [*son*], sufficiently indemnifying my general estate from all debts and liabilities in respect of the said partnership business.

Power for trustees to carry on business forming part of the testator's general personal estate (*f*).

3. I HEREBY authorise my trustees to continue and carry on for such period as they shall think fit [not exceeding —— years from the time of my death], the trade or business of a —— now carried on by me, and to employ therein the whole or such part as they shall think necessary or expedient of my personal estate after satisfaction and payment of my debts and of the legacies given by this my will, or any codicil thereto; [*or*, and to employ therein all the capital which at the time of my death shall be employed therein [and such additional capital as they may think it necessary or expedient to advance out of my general estate];] with power for my trustees to manage the same in all respects at their uncontrolled discretion, and to employ from time to time such managers or agents at such salaries or remuneration as they shall think fit, and to delegate to any such managers or any other persons or person all or any of the powers and authorities given to or vested in them in relation to the said trade or business,

(*f*) As to the liability of executors or trustees carrying on a business, whether alone or in partnership, under the powers of a will, see Byth. & Jarm. 4th ed. vol. iv. p. 420, n.; *Re Oxley*, [1914] 1 Ch. 604; 83 L. J. Ch. 442; *Re East*, [1914] W. N. 187. Executors carrying on their testator's business are not "partners" within the meaning of sect. 1 of the Partnership Act, 1890: *Re Fisher*, [1912] 2 K. B. 491. The Public Trustee may not accept a trust which involves the carrying on of a business (P. T. Act, s. 2 (4)), except as provided in the P. T. Rules, 1912, r. 7. A power to postpone the sale of a business gives power to carry it on indefinitely (*Re Crowther*, [1895] 2 Ch. 56), unless a contrary intention is implied: *Re Smith*, [1896] 1 Ch. 171.

and generally to conduct and carry on the same in all respects as if they were absolutely the owners thereof; AND I declare that my trustees shall not be liable for any losses, costs, charges, expenses, claims, or demands arising in respect of the said trade or business, but shall be fully indemnified therefrom out of my general estate (*g*). AND I declare that all profits and interest which may accrue to my estate from the carrying on of the said business, and from the employment therein of my personal estate, or any part thereof [*or*, of my capital [or of any part of my general estate so advanced as aforesaid]], shall be added to and considered and applied as part of my residuary estate.

BUSINESS.

Profits to fall into residue.

4. I HEREBY authorise my trustees in their discretion to carry on or join in carrying on my trade or business of —— either alone, or in partnership with any person or persons with whom I may be a partner at the time of my death, or who may thereafter be admitted into partnership by my trustees under the provisions in that behalf hereinafter contained, for such period as they shall think fit, [*or*, until some one of my said sons shall attain the age of twenty-one years and be desirous to take thereto, or all my sons shall die under that age or refuse to take thereto on attaining that age], or if they shall deem it expedient to discontinue the same; AND, from time to time, to enter into any new agreement or arrangement with any such partner or partners by way of substitution for, or addition to or modification of, any subsisting articles, agreements, or arrangements, and to extend, diminish, or alter or concur in extending, diminishing, or altering the said trade or business as to my trustees may seem expedient; AND, if they shall think proper, upon the expiration of the term for the time being in any such partnership as aforesaid, to renew such partnership for such further terms or term [not extending beyond the period during which I have authorised them to carry on the said trade or business] as to my trustees shall seem expedient; AND to admit or concur in admitting into any partnership for the time being subsisting in relation to the said business, any person or persons, upon such terms, and with or without premium, as my

Discretionary power to trustees to carry on business;

to renew partnership;

(*g*) As to the rights of trustees to indemnity, and the rights of business creditors, see *Re Frith*, [1902] 1 Ch. 342. And as to persons injured by the acts of trustees, see *Re Raybould*, [1900] 1 Ch. 199.

BUSINESS.

to employ all capital employed at testator's death;

to withdraw capital.

Powers of management.

To settle accounts and compound debts, &c.

trustees shall think proper [but without prejudice to the right or option of admission hereinafter given to my said sons]; AND to employ in the said business all the capital which may be invested therein at the time of my death, and all arrears of profits then belonging to me and left in the said business, and the growing profits thereof which shall fall to my share after paying all the expenses of carrying on the same, Or from time to time to add to and increase my said capital, [but so that such additions shall not at any one time exceed the amount of £—— in the whole,] or to withdraw from the said business and from the said profits arising therefrom any sum or sums which they shall think proper, and apply the same at once upon the trusts hereinafter declared of my residuary estate: AND I hereby authorise my trustees either alone, or in concurrence with any such persons or person as aforesaid, for the purpose of carrying on any such business as aforesaid, to hire and employ such persons and with such salaries as they shall think proper, and to enter into such contracts and engagements respecting the said business as they shall think reasonable, [and to adjust and settle all accounts and transactions relating thereto, in which I shall be, or my estate shall after my death become, interested; and to compromise, or pay, allow, suspend, waive, and compound any debts, claims, or demands relating to the said business, and which may be owing from or to me, or be claimed or made against or on behalf of my estate, upon such evidence, whether strictly legal or not, as they shall deem just, and to refer any disputes concerning the same to arbitration (*h*),] and to make any sale or sales upon credit, and generally to transact all matters and concerns respecting the said business, and to do or cause to be done all acts and things relative thereto, in the same manner in all respects as if they were absolutely entitled to or interested in the premises, or a share therein, as the case may be, without being responsible for any loss occasioned by any such act or thing: AND I direct that any losses, charges, and expenses of and incident to the carrying on of any such business as aforesaid, or my share therein, as the case may be, shall be borne, paid, and defrayed, in the first instance, out of my capital therein and the profits thereof, and, if they shall be insufficient, then out of my residuary estate; AND

(*h*) The words in brackets may be omitted, if desired, in reliance on the provisions of the Trustee Act, 1893, s. 21.

the profits and increase of such business, or my share therein, shall be added to and considered and applied as part of my residuary estate. BUSINESS.

5. SUBJECT to any provisions in that behalf contained in any articles of partnership or agreements which may be subsisting in respect of the said business at the time of my death, my trustees shall place such one of my sons as shall first or alone attain the age of twenty-one years, and exercise his option (such option to be declared in writing within six calendar months after his attaining that age) to succeed to my said business (each and every of my sons who shall attain that age taking a successive prior right, according to his priority of birth, to enter into the said business, in case no elder son shall have attained that age and entered the same), into the full and complete possession of my said business and assets, or my share and interest therein, and make over to such son all securities, debts, goods, effects, and premises belonging to me and used or employed in carrying on the same, PROVIDED that my son, who shall so take to the said business, or my share therein, shall give security, by bond or otherwise, at his own expense, [*or*, at the expense of my residuary estate], to the satisfaction of my trustees, for the payment, at such times and by such instalments as to my trustees shall seem proper, of the whole amount or value of my capital in the said business at the time of his succeeding thereto (without regard to the value of the goodwill of the said business), with interest on such amount or value at the rate of —— per cent. per annum, such amount or value to be settled by two valuers, one to be appointed by each party, or by the umpire of such valuers; AND I direct that the moneys so to be received from any of my said sons shall be held upon the trusts hereinafter by me declared of my residuary estate; AND that at the request of such son my trustees shall indorse upon such bond or security a memorandum of satisfaction thereof to the amount of the value of such son's share in my residuary estate under this my will or any codicil thereto.

Option to sons successively, at twenty-one, to take over the business; on giving security.

6. MY EXECUTORS [trustees] may make any arrangements they may think proper with the partners or partner for the time being of the firm of ——, of which I am a partner, for the admission

Power to executors to arrange for admission of

BUSINESS.

testator's sons into the business.

as a partner or partners of any son or sons of mine, for the whole or any part of my share in the business; and may either sell my share in the business to the son or sons so admitted, on such terms as may be reasonable; or may allot such share to him or them in satisfaction, wholly or in part, of his or their share or shares of my residuary estate; AND may allow the whole or any part of the purchase-money to be paid by any such son to remain as a loan to him, to be repaid, with interest thereon, at the rate of 5 per cent. per annum, by such instalments, at such times, and in such manner as shall be agreed upon; PROVIDED that the repayment of such instalments and interest shall be secured by the bond or covenant of such son.

Power to convert business into a limited company.

7.—(i) MY TRUSTEES may at any time, at the expense of my estate, convert or join in converting the said business into a company limited by shares, in such manner as they may think fit, and may, at the like expense, promote or assist in promoting a company for taking over the said business; AND may sell or transfer the said business, and the capital and assets and goodwill thereof, or any part thereof, to such company, or to any company having for its objects, or one of its objects, the purchase of such a business, in consideration in either case, wholly or in part, of ordinary shares wholly or partially paid up of any such company, or wholly or in part of debentures, debenture stock, or bonds or preference shares of any such company (*i*), and as to the balance (if any) in cash, payable immediately or by any instalments, with or without security; AND my trustees, or any of them, may act as directors, manager, or secretary, or hold any other office in relation to any such company without being liable to account for any remuneration received by them or him as such, and may enter into any arrangements as to any such company, or as to the sale or transfer of the said business, and the assets thereof, to any such company (whether before or after the incorporation thereof) as my trustees may think fit, notwithstanding that any such trustees or trustee may be a promoter or promoters of any such company, or may

(*i*) The Court has no power to sanction such an arrangement as this (see *Re Morrison*, [1901] 1 Ch. 701); but where the testator has held shares in a company which is reconstructed, the Court may authorise his trustees to take shares in the new company: *Re New*, [1901] 2 Ch. 534.

be interested or concerned therein, or intended so to be, as a shareholder, director, manager, secretary, or in any other capacity. BUSINESS.

(ii) Any such sale or transfer as aforesaid may, if deemed necessary or expedient, be effected by my executors in that character, in which case they shall have the like powers and authorities in relation thereto as are hereinbefore given to my trustees.

(iii) All shares, bonds, debentures, debenture stock, and moneys received as the consideration for any such sale or transfer as aforesaid, shall be vested in and held by my trustees upon the trusts hereinbefore declared of my residuary estate, and the investments and premises representing the same.

Power to leave capital in the business as a loan.

8.—(i) My TRUSTEES may, if they think fit, allow the whole or any part of the amount which from the partnership accounts shall appear to be due to my estate for my share and interest in any business in which I may be a partner at my death, to remain in such business as a loan for such period as they may think fit, at such rate of interest, either fixed or varying with the profits of the business, and upon such other terms as may be deemed expedient; AND may from time to time renew or continue such loan wholly or partially, and may agree to any alteration or modification of the terms thereof, provided that the repayment of the capital, with interest thereon as agreed, shall be secured by the bond or covenant of the person or persons to whom the loan shall be made, either with or without any other security for the same, as my trustees shall think fit.

(ii) My trustees may exercise this power, notwithstanding that they or any of them may be interested as partners or a partner in such business, or may be beneficially interested under this my will.

Power to executors to become sleeping or limited partners.

9. My EXECUTORS may exercise, at their discretion, the option given to them by the articles, dated, &c., under which my partnership in the firm of —— is now carried on, or any option which may be available in that behalf at my death, of becoming sleeping [limited] partners in such firm; AND I declare that in that event their share from time to time in the capital of the said firm shall be deemed to form part of the capital of my residuary estate, and their share from time to time in the profits thereof and interest on capital, as from the last day immediately preceding my

BUSINESS.

death, appointed by the said articles of partnership for taking the annual general accounts of the partnership business, shall be considered and applied as income of my residuary estate.

Powers for executors to wind up testator's partnership business. Short form (*k*).

10. I DIRECT my executors, as soon as conveniently may be after my death, to concur with other persons interested in winding up the business of ——, now carried on by the firm of —— and Co., of which I am a partner, and to realise my share and interest therein; AND for that purpose I authorise my said executors to enter into, make, execute and do all such agreements, arrangements, assurances, and things as they shall in their discretion think reasonable and expedient, having regard to the provisions of the articles of partnership under which the business of the said firm is carried on, or any agreement for the time being subsisting in modification thereof or substitution therefor, without being answerable for any loss which may be occasioned by any such agreement, arrangement, assurance, or thing.

The same. Full form (*k*).

11.—(i) I DIRECT my executors to concur with other persons interested in winding up the business of ——, now carried on by the firm of —— and Co., in which I am a partner, or any business in which I may be engaged as a partner at the time of my death; AND for that purpose I authorise my executors to adjust and settle all accounts and transactions relating to the said partnership business and to accept any statements of account either with or without the production of vouchers or other evidence, and to ascertain the amount or value of any share and interest in the said business either upon the footing of the articles of partnership under which the same is carried on or any agreement for the time being subsisting in modification thereof or substitution therefor, or upon the footing of any other agreement or arrangement, on such terms, and in such manner as may be agreed upon between my executors and the surviving partners or partner and other persons (if any) interested in the said business; with full power to compromise, compound, abandon, submit to arbitration, or other-

(*k*) This form, so far as the authority given is concerned, is merely declaratory, as by sect. 21 of the Trustee Act, 1893, powers of arranging, compromising, &c. are given to trustees, executors and administrators which are generally sufficient for winding up an ordinary business. The provisions of this form, however, are more ample than the statutory powers.

wise settle or concur in compromising, compounding, submitting to arbitration, or otherwise settling all or any rights or liabilities as between my estate and the surviving partners or partner or other persons (if any) interested in the said partnership business, and creditors of, or debtors to the firm, or persons under contract therewith; and in particular to leave to the surviving partners or partner, or any of them, or to any agents or other persons, the collecting or gathering in of the outstanding debts of the firm, and to sell or dispose of my share by valuation, agreement, or otherwise, on such terms and in such manner as my executors shall think fit; AND to accept or concur in accepting payment of my share therein, or of any estimated, agreed, or awarded sum in satisfaction thereof, by such instalments, on such terms, and generally in such manner as they shall think fit, and either with or without taking security for the same; AND to postpone such winding up of the said business, and ascertainment and disposal of my share therein for such period as they shall deem proper or expedient; AND to allow the whole or any part of my share in the capital of the said business to remain as a loan to the persons or person for the time being carrying on the same, for such time, upon such security, personal or otherwise, at such rate of interest, either fixed or varying with profits, and on such terms and in such manner as my executors shall think fit; AND generally to act in relation to such business as they shall in their uncontrolled discretion think proper or expedient, and as if they were the absolute owners thereof, without being answerable for any loss which may be occasioned thereby. BUSINESS.

(ii) My executors may exercise any power or discretion hereinbefore given to them, notwithstanding that they, or any of them, may be interested as partners or a partner in the said business, or may be beneficially interested under this my will.

GENERAL PECUNIARY BEQUESTS (*l*).

1. I GIVE to my wife, [*name*], the sum of £——, to be paid immediately, or as soon as may be, after my death for her imme- Legacies to wife: one to be paid immediately.

(*l*) See Robbins & Maw, 4th ed. 295, as to the distinction between general and specific legacies. If legacies are intended to be given free of duty, it should be so stated either in the gift itself or by a general clause as in Form 46.

PECUNIARY BEQUESTS.

diate use, and in priority to all other bequests hereby made: I also give to her the sum of £- - -, to be paid within twelve months after my death, with interest at the rate of 5 per cent. per annum from my death, payable quarterly in the meantime (*m*).

Pecuniary legacies to several, with provision against lapse.

2. I BEQUEATH the following legacies [all free of death duties], namely, to A. B., of, &c., the sum of £——; to C. D., of, &c., the sum of £——; to E. F., of, &c., the sum of £—— [but if any of such legatees die in my lifetime leaving issue surviving me, then I give the legacy hereinbefore bequeathed to him or her to his or her representatives to be disposed of as part of his or her personal estate].

Legacies to trustees; to one of the trustees.

3. I BEQUEATH to each of my said trustees and executors, who shall prove my will, the sum of £—— [free of death duties], as an acknowledgment for his trouble in executing the office of trustee and executor of my will; AND to the said [*trustee*] individually the sum of £——; whether or not he shall prove my will, or accept the trusts thereof (*n*), in addition to the sum of £—— hereinbefore bequeathed to him as executor and trustee thereof.

Direction for purchase of stock to be held on trust.

4. I DIRECT my trustees or trustee to purchase, within a year from my death, or to set apart from such funds as I may be possessed of, the sum of £—— $2\frac{1}{2}$ per Cent. Consolidated Stock, and be possessed thereof upon the trusts hereinafter declared of the same.

Demonstrative legacy.

5. I BEQUEATH the sum of £—— to [*legatee*], to be paid out of the proceeds of sale of a sufficient part of the sum of £—— $2\frac{1}{2}$ per

(*m*) It has been held that an immediate pecuniary legacy to the testator's widow has priority over other legacies (*Re Hardy*, 17 Ch. D. 798; 50 L. J. 241); but this decision was dissented from in *Re Schweder's Estate*, [1891] 3 Ch. 44, and in *Cazenove* v. *Cazenove*, 61 L. T. 115. As to interest on such a legacy, see *Re Whittaker*, 21 Ch. D. 657; *Re Crane*, [1908] 1 Ch. 379.

As to legacies to trustees.

(*n*) The presumption is that a legacy given to a person appointed executor is annexed to his office (*Re Appleton*, 29 Ch. D. 893), except in the case of a *residuary* gift (*Griffiths* v. *Pruen*, 11 Sim. 202; *Christian* v. *Devereux*, 12 Sim. 264; *Re Maxwell*, [1906] 1 Ir. R. 386), unless the testator has shown, by positive expression, that the legacy was intended to be independent of the office: *Read* v. *Devaynes*, 3 Br. C. C. 95; *Stackpoole* v. *Howell*, 13 Ves. 417; *Hanbury* v. *Spooner*, 5 Beav. 630.

Cent. Consolidated Stock on this day standing in my name; [PROVIDED ALWAYS, that if at the time of my death there shall not be any, or not be a sufficient amount of such stock standing in my name to provide for payment of the said legacy of £——, I direct that the whole or the deficient part of the same sum shall be made good and paid out of my residuary personal estate (*o*)]. PECUNIARY BEQUESTS. Proviso as to ademption.

6. I BEQUEATH to [A. B.], the wife of [C. B.], of, &c., the sum of £——, and I declare that this sum shall not be subject to the trusts declared by her marriage settlement of her after-acquired property (*oo*). Legacy to avoid covenant to settle.

7. I GIVE to such of my clerks, [*names*], as shall be in my service or employ at the time of my death, the sum of £—— apiece, to be paid at the end of three calendar months next after my death. I give to each of the servants who shall be in my service at the time of my death, and shall have lived with me continuously three years or upwards, the amount of two years' wages; AND to each of the other servants who shall be in my service at the time of my death, and shall have lived with me continuously one year or upwards, the amount of (*p*) one year's wages, in addition to what may be due and owing to them respectively on account of wages at the time of my death (*q*). Legacies to clerks, servants, &c.

(*o*) The words in brackets are merely declaratory, and may be omitted; a demonstrative legacy is not liable to ademption: *Mullins* v. *Smith*, 1 Dr. & Sm. at p. 210; Roper on Legacies, 4th ed. at p. 198; *Re Walford*, [1912] 1 Ch. 219, at p. 228.

(*oo*) See, as to this provision, *Scholfield* v. *Spooner*, 26 Ch. D. 94. This bequest is framed on the assumption that the covenant or agreement to settle after-acquired property excluded property so bequeathed.

(*p*) See *Re Earl of Sheffield*, [1911] 2 Ch. 267.

(*q*) A legacy to servants applies to such only as spend their whole time in the testator's service, and not to one who is occasionally employed only, such as a steward of courts (*Townshend* v. *Windham*, 2 Vern. 546), a coachman supplied by a jobmaster (*Chilcott* v. *Bromley*, 12 Ves. 114), or a boy occasionally employed to clean boots and knives, &c.: *Thrupp* v. *Collett*, 26 Beav. 147. But a farm bailiff is a servant within the meaning of such a gift: *Bulling* v. *Ellice*, 9 Jur. 936; *Armstrong* v. *Clavering*, 27 Beav. 226. The expression "domestic servants" will not include outdoor servants not boarded by the testator, as gardeners, gamekeepers, stable servants, &c.: *Ogle* v. *Morgan*, 1 De G. M. & G. 359. See *Howard* v. *Wilson*, 4 Hagg. 107; *Re Lawson*, [1914] 1 Ch. 682; 58 Sol. J. 320. As to legacies to servants.

PECUNIARY BEQUESTS.

8. I BEQUEATH to my trustees the sum of £——, to be held upon the trusts hereinafter declared concerning the same.

Legacy in trust.

£—— to be paid to a widow by weekly instalments; surplus for her burial.

9. I BEQUEATH to my trustees £——, upon trust thereout to pay or apply, for the benefit of [*name*], widow, the sum of —*s.* weekly, [monthly,] during her life, or until such sum shall be exhausted; such payment to commence from the day of my death (the income (if any) of the said sum of £—— to be added to the capital and to be applicable as part thereof): AND after her death to apply all or a competent portion of the surplus (if any) for her burial, and to add the ultimate surplus (if any) to my residuary personal estate.

Allowance for son.

10. I BEQUEATH to my trustees the sum of £——, to be held in trust for my son, [*name*], and to be paid to him by way of allowance during his minority in such portions, or to be otherwise applied for his benefit in such manner, as my trustees shall think proper; AND in case of all or any part of such sum not being applied as aforesaid during my said son's minority, such sum, or the unapplied part thereof (as the case may be), shall be paid to him on his attaining the age of twenty-one years, and in case of his dying before me, or under that age, shall form part of my residuary personal estate. AND I direct that the income (if any) to arise from the said sum of £——, or any part thereof, shall be

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Generally, under gifts to servants, those only can take who were in the testator's service when he died: *Jones* v. *Henley*, 2 Ch. Rep. 162; *In re Marcus* (1887), W. N. 168; but see *Parker* v. *Marchant*, 1 Y. & C. C. C. 290; *Re Sharland*, [1896] 1 Ch. 517. A temporary absence at the time of the testator's death will not disentitle a servant to the benefit of the legacy: *Herbert* v. *Reid*, 16 Ves. 486. But a servant who has permanently quitted the testator's service either voluntarily or by dismissal from whatever cause, or even by wrongful dismissal, is not entitled to participate in a legacy to servants "living with me at my death": *Darlow* v. *Edwards*, 1 H. & C. 547; *Re Serres' Estate*, 10 W. R. 751; *Re Hartley's Trusts*, 26 W. R. 590. As to a "chauffeur" being a "manservant," see *Re Bell*, [1914] W. N. 89.

It has been held that under a gift to the testator's *two* servants living with him at his death, a third servant engaged after the date of the will was entitled: *Sleech* v. *Torrington*, 2 Ves. sen. 560.

A legacy of a year's wages is confined to such servants as are hired by the year: *Booth* v. *Dean*, 1 My. & K. 560; *Blackwell* v. *Pennant*, 9 Hare, 551; *In re Ravensworth*, [1905] 2 Ch. 1, distinguished in *Re Earl of Sheffield*, [1911] 2 Ch. 267.

added to the capital and be applicable in all respects as part thereof. PECUNIARY BEQUESTS.

11. I BEQUEATH to [*legatee*] the sum of £——, to be paid to him in addition to the amount of any debt I may owe to him at my death. Legacy to a creditor (*r*).

12. I DECLARE that any legacy hereby bequeathed to any person to whom, or to whose husband or wife, I shall be indebted at my death, shall be paid to him or her in addition to and not by way of satisfaction of any moneys which may be owing to him or her, or to his or her wife or husband. Direction as to legacies to creditors.

13. I BEQUEATH to my son, [*name*], [in case he should survive me (*s*),] the sum of £——, with interest thereon at the rate of —— per cent. per annum from the day of my death. Legacy to son (liable to lapse).

14. I BEQUEATH to my son, [*name*], the sum of £——, if and when he shall attain the age of twenty-one years, but without interest in the meantime (*t*). Legacy to vest at twenty-one, without interest.

15. I BEQUEATH unto my brother, [*name*], the sum of £——, to be paid as soon as convenient after my death; such legacy, if not paid within one calendar month, to carry interest at the rate of 4 per cent. per annum, from the date of my death. Legacy to carry interest.

16. I BEQUEATH to my son, [*name*], the sum of £——, if and when he shall attain the age of twenty-one years, with interest thereon at the rate of —— per cent. per annum from the day of my death [such interest to be paid during his minority to his guardians or guardian for his maintenance and education]: AND Legacy at twenty-one with interim maintenance;

(*r*) As to the presumption of satisfaction in the case of legacies to creditors, see *Re Rattenberry*, [1906] 1 Ch. 667; notes to *Ex parte Pye*, White & Tudor, L. C.; *Re Fletcher*, 38 Ch. D. 373; *Re Huish*, 43 Ch. D. 260; *Re Horlock*, [1895] 1 Ch. 516. The presumption does not apply in the case of a *donatio mortis causâ* followed by a legacy of equal amount: see *Hudson* v. *Spencer*, [1910] 2 Ch. 285.

(*s*) This provision is necessary if the testator intends that the Wills Act, s. 33, shall not apply.

(*t*) A contingent legacy will not generally carry interest, except where the testator stands *in loco parentis* to the legatee, in which case, if it is not the testator's intention that the legacy should carry interest, the presumption should be expressly negatived, as in the text.

PECUNIARY BEQUESTS.

gift over in case of lapse on death under age.

if my said son should die before me, or under the age of twenty-one years, I bequeath the same sum of £—— [and interest] to C. D., absolutely. [*Or*, I declare that the said legacy shall fall into and form part of my residuary personal estate.]

Legacy to class of children with interim maintenance (*u*).

17. I BEQUEATH the sum of £—— unto and among my children equally, who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, with interest on such respective legacies at the rate of —— per cent. per annum from the day of my death, [such interest to be applied by my trustees in their discretion, for or towards the maintenance and education of such children respectively, or, if they shall think fit, to be paid by them without being concerned to see to the application thereof, to the guardians or guardian of such respective children]: PROVIDED ALWAYS (*x*) that this legacy shall not vest as a transmissible interest in any such child unless he attains the age of twenty-one years or she attains that age or marries.

Legacy to infant to be paid to his parent or guardian.

18. I GIVE to my nephew, [*legatee*], of, &c., the sum of £——, and if at the time of my death he shall not have attained the age of twenty-one years, then I authorise my executors at any time during such minority to pay the same sum to my brother, [*name*], the father of the said [*legatee*], or if my said brother shall be then dead, to the guardian or guardians of the said [*legatee*], and I declare that the receipt of my said brother or of such guardian or guardians shall be a sufficient discharge to my executors.

Gift to godchildren.

19. I BEQUEATH to each of my godchildren the sum of £——, and if there shall be any doubt as to who are objects of this bequest, my executors may act upon such evidence as they think

(*u*) A gift to such members of a class of children as shall attain a specified age vests only in those who actually attain that age: see *Dewar* v. *Brooke*, 14 Ch. D. 529.

It will be observed that in this and the preceding form the application of the whole income for maintenance, &c. is obligatory; if this is not desired, the words in brackets will be omitted.

(*x*) This proviso is intended to rebut the presumption that the gift of interim interest vests this legacy (which would otherwise be contingent on the legatee attaining twenty-one) in the legatee on the testator's death: see *Hanson* v. *Graham*, 6 Ves. 239; *Re Parker*, 16 Ch. D. 44; *Re Bunn*, 16 Ch. D. 47; *Re Gosling*, [1903] 1 Ch. 448. A gift over or direction that the legacy should fall into the residue should also be inserted.

fit, and their determination shall be conclusive: AND any god-child who shall not claim his or her legacy within one year from my death shall not be entitled thereto. PECUNIARY BEQUESTS.

20. I BEQUEATH to [*legatee*], of, &c., the sum of £——, with interest thereon at the rate of —— per cent. from the day of my death, such legacy to be an interest vested in the said [*legatee*] at my death and transmissible accordingly, but not to be paid to him until he shall attain the age of twenty-one years (*y*). Vested legacy payable at twenty-one.

21. I BEQUEATH the sum of £—— to [A. B., of, &c., and C. D., of, &c., in trust for] such child or children of mine as shall be living at my death [and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry], and any child or children of mine who may have died in my lifetime (whether before or after the date of this my will) leaving issue living at my death (*z*), if more than one, in equal shares, and so that the share hereby given to [*or*, in trust for] any such deceased child as aforesaid shall vest in his or her representatives as part of his or her personal estate in the same manner as if he or she had survived me and died immediately after me [having attained a vested interest]. Bequest to or in trust for children of testator as a class, including those dying in his lifetime leaving issue.

22. I BEQUEATH the sum of £—— to [*name*], of, &c., or if he should die in my lifetime, leaving issue surviving me, then, to his executors or administrators (*a*), to be disposed of by them as part of his general personal estate. Legacy with provision against lapse.

(*y*) As to interest on legacies payable *in futuro*, see *Crickett* v. *Dolby*, 3 Ves. 10; *Leake* v. *Robinson*, 2 Mer. 384; *Wood* v. *Penoyre*, 13 Ves. 326; *Donovan* v. *Needham*, 9 Beav. 164; *Earle* v. *Bellingham*, 24 Beav. 448; *Lord* v. *Lord*, L. R. 2 Ch. 782.

(*z*) The Wills Act, s. 33, does not apply to a gift to the children of the testator as a class. This clause adapts the provisions of the section to the shares of deceased children under a class gift. As to death duties, see next note.

(*a*) This is practically an adaptation of the provisions of the 33rd section of the Wills Act, which applies only to children and other issue of the testator: see *Re Coleman and Jarrom*, 4 Ch. D. 165. It is not sufficient merely to provide against lapse; there should be a direct gift to the personal representatives, as in the text: see the conflicting decisions in *Re Gresley's Settlement*, [1911] 1 Ch. 358; *Re Clunies-Ross*, [1912] W. N. 33; *Re Greenwood*, [1912] 1 Ch. 392. As to death duties on such a

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Legacy to A. B. Substitution of children in case of lapse.

23. I BEQUEATH the sum of £—— to [*legatee*], of, &c., or, if he should die before me, then, to his children or child (if any) living at my death, who being male attain the age of twenty-one years, or being female attain that age or marry, if more than one, in equal shares.

The same, to several.

24. I BEQUEATH the legacies following, that is to say, to [*legatee No.* 1], of, &c., the sum of £——, to [*legatee No.* 2], of, &c., the sum of £——, &c.; but if any of the said legatees should die before me, then I give his or her legacy to his or her children, or child, &c. [*continue as in Form* 23].

Legacy to married woman with restraint on anticipation during coverture (*b*).

25. I BEQUEATH to [*legatee*], the wife of [*name*], of, &c., the sum of £——: PROVIDED ALWAYS, that if the said [*legatee*] shall at the time of my death be under her present or any other coverture my trustees shall retain the said sum during such coverture, and invest the same in their names, with the consent of the said [*legatee*], in or upon any of the investments hereinafter authorised, with power to vary such investments, with the consent of the said [*legatee*]; AND shall pay the income arising from such investments to the said [*legatee*] from time to time during such coverture, and the said [*legatee*] shall not have power during such coverture to assign, charge, or otherwise dispose of the said sum of £—— or the future income thereof by way of anticipation.

Legacies to several, with restraint on

26. I BEQUEATH the following legacies, that is to say, &c. [*legacies to several*]: PROVIDED ALWAYS, that if any such legatee,

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legacy, see *Lord Advocate* v. *Bogie*, [1894] A. C. 83; and as to the duty on legacies saved from lapse by sect. 33 of the Wills Act, see *Re Scott*, [1901] 1 K. B. 228.

(*b*) As to the effect of a restraint on anticipation in the case of an absolute gift, see *Re Bown*, 27 Ch. D. 411; *Re Currey*, 32 Ch. D. 361; *Re Grey's Settlements*, 34 Ch. D. 712; *Re Hutchings* (1887), W. N. p. 217; *Re Tippett and Newbould*, 37 Ch. D. 444; *Re Bankes*, [1902] 2 Ch. 333. The distinction between income-bearing and other funds laid down in *Re Clarke's Trusts*, 21 Ch. D. 748, must be regarded as not well founded: see *Re Bown, supra*. In imposing a restraint on anticipation, the rule against perpetuities must be considered. As to the effect of this rule, see *Re Ferneley's Trusts*, [1902] 1 Ch. 543, followed in *Re Game*, [1907] 1 Ch. 276. As to the Married Women's Property Act, 1882, see sect. 19 of that Act; and see also *Re Lumley*, [1896] 2 Ch. 690.

being female, shall at the time of my death be under coverture, then and in every such case my trustees shall retain her legacy during her coverture, and invest the same, with the consent of such legatee, in the name of my trustees in or upon any of the investments hereby authorised, and may vary such investments with the like consent; AND shall pay the income arising from such investments to such legatee during coverture, without power of anticipation.

anticipation by female legatees during coverture.

27. I BEQUEATH to the said [*trustees*] the sum of £—— upon trust, to invest the same in their names in or upon any of the stocks, funds [shares], or securities hereinafter authorised, with power to vary such investments, and I direct my trustees to stand possessed of such trust fund and the investments and income thereof, upon trust for such person or persons and for such purposes as [*legatee*], of, &c., shall while not under coverture by deed or will, or while under any coverture by will appoint: AND in default of any such appointment or so far as any such appointment shall not extend upon trust to pay the income of the said trust fund to the said [*legatee*], without power of anticipation, during her life, and after her death to stand possessed of the capital of the said trust fund in trust, if the said [*legatee*] should die discovert, for the said [*legatee*], her executors, administrators, and assigns, but if she shall die under coverture, then in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the personal estates of intestates at the time of her death, if her husband had died immediately before her [*or, if such is the intention,* if she had never been married (*d*)], and she had died possessed thereof and intestate, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

Legacy upon special trusts for the benefit of a married woman (*c*).

28. I BEQUEATH to the said [*trustees*] the sum of £—— upon trust, that my trustees shall invest the same in their names in or upon any of the investments hereinafter authorised, with power

Legacy in trust for the benefit of a lunatic.

(*c*) These trusts are intended to give the legatee full powers of disposition while discovert, but to restrict such powers as far as possible during coverture.

(*d*) As to this expression excluding issue of the legatee, see *Re Brydone's Settlement,* [1903] 2 Ch. 84.

PECUNIARY BEQUESTS.

to vary such investments, and shall stand possessed of the said trust fund and the investments and income thereof upon trust, during the life of [*lunatic*], of, &c., to pay or apply the whole or so much as shall in their judgment be sufficient of the income [and capital] of such trust fund to such person or persons, or for such purposes and in such manner and upon such trusts, for the maintenance, clothing, comfort, or otherwise for the benefit of the said [*lunatic*], and either subject to the control or superintendence of my trustees, or any of them, or otherwise, as they shall think fit; AND from and after the death of the said [*lunatic*] I direct and declare that the said legacy of £——, and the investments thereof [or so much thereof as shall not have been paid or applied for the purposes aforesaid], shall fall into and form part of my residuary personal estate.

Legacy in trust for improvident son.

29. I BEQUEATH to my trustees the sum of £——, in trust to invest the same in their names in or upon any of the investments hereby authorised, with power for my trustees from time to time to vary such investments; AND to stand possessed thereof in trust to pay the income thereof unto my son, [*name*], until he shall commit or suffer some act, default, or process, which but for this limitation would have the effect of giving the benefit of such income either wholly or partially to any other person or persons; and thenceforth during the life of my said son, to pay or apply the said income to or for the benefit of the wife and child or children for the time being of my said son [*name*], or such one or more of them, and in such shares, if more than one, and in such manner as my trustees shall think fit; AND while there shall be no such wife or child, then to invest and accumulate the income in augmentation of the capital of the said legacy or trust fund, but with power to resort to such accumulations before or after my said son's death, as if the same were income; PROVIDED ALWAYS, that such trust for investment and accumulation shall not extend or be exerciseable beyond twenty-one years from my decease; AND if and when such trust for accumulation shall cease to be exerciseable, to apply the future income in the manner in which it would be applicable if my said son, [*name*], were dead; AND after the death of my said son, to pay the income from the said legacy or trust fund to his widow (if any); AND after her death to transfer or divide the capital of the said legacy or trust fund to or among such child or children of my said son as being male attain the

Income for son until alienated, then for son's wife and children, as trustees shall think fit;

if no wife or child, to accumulate.

After son's death, for widow for life, then for children at twenty-one or marriage.

age of twenty-one years, or being female attain that age or marry. in equal shares if more than one; AND if no child of my said son should take a vested interest in the said legacy or trust fund, then, subject to the trust aforesaid, the same shall be held in trust for [*ulterior trusts*] [*or*, I direct that the same shall fall into and form part of my residuary personal estate]. PECUNIARY BEQUESTS.

30. I BEQUEATH to each of my sons, other than and except such one of my said sons (if any), as, at the time of my death, shall become entitled to an estate for life in possession in the real estates respectively hereinbefore [*or*, hereinafter] devised [and appointed] the sum of £——, the same to be a vested interest in each such son immediately on my death, but not to be payable until the expiration of eighteen calendar months after my death; nevertheless, I declare, that each of the said legacies shall carry interest at the rate of —— per cent. per annum from the time of my death, to be payable quarterly, the first quarterly payment to be paid at the expiration of three calendar months after my death. Legacies to younger sons. Interest.

31. I BEQUEATH the sum of £—— to [*name*], of, &c., the natural [*or*, reputed] son of [A. B.], late of, &c., deceased. Legacy to natural son of A. B.

32. I BEQUEATH to each and every of my children who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, [including my daughter [*illegitimate daughter*], who resides with me, and is now aged —— years, or thereabouts (*f*) (which my children, including the said [*illegitimate daughter*], are hereinafter collec- Legacy to children (including a natural daughter) to be invested.

(*f*) Any description sufficient to identify the person is sufficient, without disclosing the fact of illegitimacy. But where the fact is not generally known, and it is desired to prevent any suspicion of it from arising, it is better to extend the same particularity of description to all the children, thus:— As to describing illegitimate children.

"I GIVE to each of my five children now born, namely [*names of legitimate children and of illegitimate child*], and to every other child of mine hereafter to be born." Children now born, and future children.

In subsequently referring to the children as a class, it is well always to particularise the children, adding the words "and to every other child," &c., or to expressly include the illegitimate children by reference as in

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tively referred to as "my said children")], the sum of £——, the same several legacies to be paid as soon as may be after my death, and to bear interest from the day of my death at the rate of 4 per centum per annum. And I direct, that the legacies of such of my said children as at the time of my death shall have attained the age of twenty-one years, or, being a daughter or daughters, shall be married under that age, shall be paid to them respectively within twelve calendar months after my death; And that the legacies of such of my said children as shall, at the time of my death, be under the age of twenty-one years and, being a daughter or daughters, unmarried, shall be paid to and invested by and in the names of my trustees in any of the investments hereby authorised, with power for my trustees to vary such investments (*g*). [*Insert here, if desired, maintenance and accumulation clauses,* post, *p.* 584 (*h*); *and advancement clause,* post, *p.* 585]; And the capital of such legacy or respective legacies, [or so much thereof as shall not have been applied for the maintenance, education, or benefit or for the advancement of my said children or any of them [under the provisions in that behalf hereinbefore contained], together with any unapplied accumulations of the income thereof, shall be paid or transferred to such child or children respectively, when and as he, she, or they respectively shall, being a son or sons, attain the age of twenty-one years, or, being a daughter or daughters, attain that age or marry under that age. And in case any of my said children shall die under the age of twenty-one years, and, being a daughter or daughters, without having been married, then I direct, that the legacy or legacies

Directions as to payment of legacies to children, and investment during minorities.

Legacies of children dying under age and unmarried to sink into residue.

the text, for an illegitimate child will not necessarily, apart from indications of intention, be included in subsequent provisions referring to children as a class: see *Bagley* v. *Mollard*, 1 Russ. & M. 581; *Megson* v. *Hindle*, 15 Ch. D. 199; *Drummond* v. *Leigh*, 30 Ch. D. 110; *Re Hall*, 35 Ch. D. 551. See, further, as to gifts to illegitimate children, *Re Smilter*, [1903] 1 Ch. 198; *Re Frogley*, [1905] P. 137; *Re Loveland*, [1906] 1 Ch. 542; *Re Corsellis*, [1906] 2 Ch. 316; *Re Eve*, [1909] 1 Ch. 796; *Re Pearce*, [1914] 1 Ch. 254; *Re Embury*, [1914] W. N. 220; 58 Sol. J. 612; Theobald on Wills, 7th ed. pp. 284 *et seq.*

(*g*) For investment clauses, see *ante*, pp. 355 *et seq.*

(*h*) Maintenance and accumulation clauses will be generally unnecessary: see the Conveyancing Act, 1881, s. 43 (1). As to the application of this section, see Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 113.

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hereinbefore bequeathed to such child or children respectively, together with any accumulations of the income thereof, shall [(subject, nevertheless, to any advancement or advancements which shall or may have been made thereout as aforesaid),] fall into and form part of my residuary personal estate. PROVIDED ALWAYS, that, in case any of my said children should die before me, or (being a son) should survive me and die under the age of twenty-one years, and any child or children of any such child of mine should be living at my death, then, and in every such case, I bequeath the legacy hereinbefore intended for such child of mine so dying, with interest thereon as aforesaid, and in case of a son of mine surviving me and dying under age, any accumulated income accrued during such son's life, unto such his or her child or children, and if more than one, in equal shares (*i*). AND I declare that the provisions hereinbefore contained as to the time of payment of the legacies hereinbefore given to my said children, and as to the investment thereof in the meantime, and the application of the income thereof [and as to advancements out of the same legacies], and as to the sinking into the residue of the legacies intended for any legatees who shall die under the age of twenty-one years, or, being a daughter or daughters, unmarried, shall apply and extend to such grandchild or grandchildren of mine as aforesaid, and the legacies hereby given to him, her, or them.

Clause substituting children of any child dying before testator.

33*a*. I BEQUEATH the sum of £—— unto my [six other] children, [*names*], equally to be divided among them, and to be paid to them respectively at the end of twelve calendar months next after my death, but without interest in the meantime; but the respective shares of my said [six] children to be interests vested in them respectively immediately upon my death.

Legacy among children, *nominatim* equally.

(*i*) The 33rd section of the Wills Act, 1837, would furnish, in many cases, a sufficient provision against lapse by the death of a child of the testator leaving issue. But where the legacy is limited not to vest, or not to be raised except on certain conditions or in certain events, or when it is intended only to admit the issue of the deceased legatee, and to exclude his creditors and any parties who might claim under his will, or collaterally as next of kin of a child of the legatee dying in infancy, the legacy should be expressly given to the issue by substitution, which will exclude the operation of the 33rd section.

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Substitution of issue of children dying before testator.

33*b*. PROVIDED ALWAYS, that in case any of my said [six] children [lastly mentioned] should die in my lifetime, or (being a son or sons) under the age of twenty-one years, leaving a child or children (*k*) who shall be living at my death, and who shall live to attain the age of twenty-one years or (being a daughter or daughters) marry under that age, then the child or children attaining the said age or (being a daughter or daughters) marrying, of each such child so dying in my lifetime, or (being a son) under the age of twenty-one years, shall represent and stand in the place of his, her, or their deceased parent, and shall be entitled to the same share or shares, as well original as accruing, in the said legacy or sum of £——, which his, her, or their deceased parent would have been entitled to, if living at the time of my death and attaining the age of twenty-one years or (being a daughter) marrying, such share and shares to be divided between or among such children, if more than one, in equal proportions, and if there should be only one child, then to go to such only child.

Clause of accruer as to the shares of children dying in testator's lifetime or under age.

PROVIDED ALSO, and I further declare, that in case any of my said [six] children should die in my lifetime or (being a son or sons) under the age of twenty-one years, and no child of any such child should be living at my death and attain the age of twenty-one years or (being a daughter) marry, or in case any of my said [six] children (being a daughter or daughters) should die under the age of twenty-one years and unmarried, then, and in every such case, the share or respective shares [as well original as accru-

Respective extent of the words "children" and "issue."

(*k*) This clause, it will be observed, lets in, by way of substitution for the deceased legatees, their children merely, and not issue generally; so that it would not embrace the share of a child dying in the testator's lifetime leaving a grandchild but no child. In using the words "issue" and "children," attention should always be paid to their respective and various import. If, by the word "issue," the testator meant to designate issue of every degree, the intention should be declared in so many words, or, at all events, every expression which might give rise to an argument for restricting the word "issue" to children should be carefully avoided. On the other hand, if the testator's bounty is intended for children exclusively, the objects of the gifts should be invariably described and referred to by the word "children," in preference to "issue," as more completely preventing misconstruction. It seems that where the share to which issue are to succeed is described as their *parents'* share, the testator is considered to have explained himself to employ the word "issue" in the sense of *children*. See Theobald on Wills, 7th ed. p. 318.

ing (*l*),] of my child or children respectively so dying, of and in the said legacy or sum of £——, shall be held (*m*) upon trust for such of my other children or their issue as shall eventually become entitled, under the limitations hereinbefore contained, to participate in and to receive actual payment of the other shares or share of the said legacy or sum of £——, and if more than one, in the like shares and proportions. [*Add, if desired, advancement clause*, post, *p.* 585.]

Testator's wife to take the interest on children's legacies until payable, to maintain the children.

34*a*. I DIRECT, that my said wife shall be entitled to interest after the rate of 4 per cent. per annum, in respect of the said sum of £—— hereinbefore bequeathed as aforesaid, [or such part of the said sum of £—— as I shall not have advanced to my said children as hereinafter mentioned,] during the period between my death and the expiration of the said twelve calendar months when the said several legacies will become payable, to the intent that my said wife shall, by and out of such interest, keep up a household and establishment, and provide for the maintenance and education of my said children for whose benefit the same

(*l*) These words will not be required unless the variation in the next note is adopted.

(*m*) In the precedent from which this form was taken, the legacy was given to six of seven children, there being a separate provision for the seventh (a married daughter), and the gift over in this place was thus expressed:—

Alternative form of clause as to accruer.

"Shall go and belong to and be divided equally among all my children who shall be living at the time of my death, [including my said daughter, [*married daughter*], if she should be then living,] and the child or children of any child or children who shall be then dead, such grandchild or grandchildren to take the share or respective shares of his, her, or their deceased parent or parents only; the shares of the said children and grandchildren respectively to be vested and payable or transferable at the like ages or times, and in the like manner in all respects, as his, her, or their original share or shares is or are hereby directed to be vested and to be paid or transferred: AND the share of my said daughter, [*married daughter*], to be subject to and held upon the same trusts, and for the same intents and purposes, as are hereinbefore expressed concerning the legacy or sum of £—— hereby bequeathed in trust as aforesaid."

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bequests are hereinbefore bequeathed, in such manner as she shall think proper during the said twelve calendar months, without being liable to be called to an account for or by reason of any irregularity in the distribution or division of the said interest.

Power to trustees to settle the legacies of daughters marrying under twenty-one years of age.

34*b*. PROVIDED ALWAYS, and I hereby direct, that in case any of my daughters should, after my death, marry, while she or they respectively shall be under the age of twenty-one years, then, and in every such case, my trustees may, if they think proper, but not otherwise, settle the whole or any part of the legacy or legacies, as well original as accruing, hereinbefore bequeathed to such daughter or daughters respectively, [upon trusts for the benefit of such daughter or daughters respectively, and her or their child or respective children or more remote issue, similar to and corresponding with the trusts hereinbefore declared concerning the legacy of £——, hereby bequeathed in trust for my said daughter, [*married daughter*], and her children and more remote issue, as aforesaid, or] upon such [other] trusts, and subject to such [other] powers and provisions for the benefit of the daughter or daughters respectively so marrying, and her or their husband or husbands, child or children, or more remote issue and next of kin, or any of them, and reserving such powers and authorities to the trustees for the time being of such settlement, in relation to the said legacy or legacies respectively, as my said trustees or trustee shall think proper. [*Or specify the trusts upon which the settlement is to be made.*] AND I further declare, that the expense of every such settlement shall be paid out of the funds comprised therein (*n*).

Costs of settlement.

(*n*) It is often convenient to give trustees a power of settling the legacy of a female marrying during minority, not only as a protection to the legatee against the consequences of an imprudent marriage, but because it may happen that otherwise no effectual settlement can be made, except by means of an application to the Court under the Infants' Settlement Act, 1855 (18 & 19 Vict. c. 43): see, as to Ireland, stat. 23 & 24 Vict. c. 83. Such is necessarily the case where the intended husband, as well as the wife, is a minor, since neither party can be bound by any act done whilst in this state of disability. An infant's marriage settlement is, however, voidable only, not void: *Davies* v. *Davies*, L. R. 9 Eq. 468; *Smith* v. *Lucas*, 18 Ch. D. 531, at p. 543; *Burnaby* v. *Equitable Reversionary Interest Soc.*, 28 Ch. D. 416; *Haynes* v. *Foster*, [1901] 1 Ch. 361. Notwithstanding sect. 19 of the M. W. P. Act, 1882, in order to bind the

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Legacy in trust for children of sister.

35*a*. I BEQUEATH the sum of £—— to the said [*trustees*] in trust for all and every such children or child of my sister, [*name*], living at my death or born afterwards, and such children or child of any children or child of my said sister who shall be then dead, as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if more than one in equal shares as between brothers and sisters: But so that the children collectively or child of any deceased child shall take, if more than one, in equal shares, such share only as his, her, or their parent would have taken, if living.

Presumptive shares.

35*b*. I DIRECT my trustees to invest the said sum of £—— in manner hereinafter provided, and to pay to each adult son or grandson, and to each adult or married daughter or granddaughter of my said sister, the income of his or her presumptive share for the time being (*o*).

Authority to divide the funds when mother shall have attained a certain age.

AND I authorise my trustees, if they should think fit, to distribute the said sum of £—— in the lifetime of my said sister, at any time after she shall have attained the age of fifty years.

Legacies to nephew and niece to be paid at twenty-one or marriage, with cross limitations, and gift over.

36. I GIVE to my nephew, [*name*], if he attain the age of twenty-one years, the sum of £——. I give to my niece, [*name*], £——, if she attain that age or marry. AND, if either my said nephew should die before me or under age, or my said niece should die before me or under age and without having been married, I give the legacy intended for such nephew or niece so dying to the other of them, if he or she attain his or her majority, or (as to my said niece) if she marry; AND, if both should die before me or under age and (as to my said niece) unmarried, I give their respective legacies to my cousin, [*name*].

Legacy to the six children of A. B.

37. I GIVE the sum of £—— to or among such of the six children of my late cousin, [*name*], as shall survive me (*p*), if more than one, in equal shares, as tenants in common.

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husband the settlement must be confirmed by the wife when she comes of age: see sect. 2 of the M. W. P. Act, 1907. See, generally, as to infants' marriage settlements, Key & Elph. 10th ed. vol. 2, p. 671, note (*d*).

Apportionment of income.

(*o*) If a child were born in the interval between two days of payment, this would be a determination *pro tanto* of the interest of any adult child or children in the income here directed to be paid, and the Apportionment Act (33 & 34 Vict. c. 35) would therefore apply.

(*p*) A gift to "the six children of A.," as tenants in common, not being

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Legacy among living persons by name, and the children of deceased persons *per stirpes*.

38. I BEQUEATH the sum of £—— unto such of the following persons, [*names*] as shall attain the age of twenty-one years, or die under that age leaving a surviving husband or wife or issue, and the child or children who shall attain the age of twenty-one years, or die under that age leaving a surviving husband or wife or issue, of [*deceased persons*], respectively deceased, in equal shares; But so that the child or the children collectively of one parent shall take one share only, to be divided equally among them; AND in case any of the said intended legatees should die before me, leaving a husband or wife or issue living at my death, I give the share which each such legatee would have taken, if he or she had survived me, unto his or her executors or administrators, as part of his or her general personal estate.

Substitution of personal representatives of legatee dying before testator, and leaving a widow, husband, or child.

Legacies to nephews at twenty-one.

Substitution of children of deceased nephews.

Legacies to nieces at twenty-one or marriage.

Substitution of children of deceased niece.

Clause of accruer.

39. I GIVE £—— to each of my four nephews [*names*] (children of my late brother, [*name*]), who shall survive me, and attain the age of twenty-one years. I give the like sum to or equally among the child or children who shall attain the age of twenty-one years or die under that age leaving issue of each of my said nephews who shall die before me, or under the age of twenty-one years. I give £—— to each of my three nieces, [*names*], (children of my said late brother,) who shall survive me and attain the age of twenty-one years, or marry under that age. I give the like sum to, or equally among, the child or children who shall attain the age of twenty-one years, or die under that age leaving issue, of each of my said nieces who shall die before me. AND I give such of the said legacies intended for my said nephews and nieces respectively, or their issue, as shall not take effect under the bequest hereinbefore contained, unto and among such of my said nephews and nieces, and their issue, as shall take vested interests or a vested interest under the said bequest; and if more than one, to be divided between or among

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a gift to a class, would be liable to lapse as to the share of any legatee dying before the testator: *Page* v. *Page*, 2 P. Wms. 489; *Peat* v. *Chapman*, 1 Ves. sen. 542; *Sykes* v. *Sykes*, L. R. 3 Ch. 301. But a gift under the same circumstances to "the child or children of A.," as tenants in common, would wholly vest in those who survived the testator (*Doe* d. *Stewart* v. *Sheffield*, 13 East, 526; *Shuttleworth* v. *Green*, 4 My. & Cr. 35); and this rule as to class gifts applies to a gift to A. and the children of B.: see *Kingsbury* v. *Walter*, [1901] A. C. 187.

them, in proportion to the respective amounts of their respective original legacies under the said bequest hereinbefore contained.

Appointment of portions under power in settlement.

40. In exercise of the powers contained in my marriage settlement, I direct the annual sum of £—— to be raised and paid to my wife, during her life, without power of anticipation. And I appoint to each of my sons, being an object of the power in that behalf contained in my marriage settlement, who shall attain the age of twenty-one years or marry, the sum of £——; And, by virtue of the same power, I appoint to each of my daughters who shall attain the age of twenty-one years or marry, the sum of £——, without power of anticipation. I declare that the sum of £——, which I have expended in the purchase of a partnership share in the firm of —— & Co. for my son, [*name*], is to be considered as a satisfaction to that extent of the portion hereby appointed to him; And that the sum of £——, which I settled upon the marriage of my daughter, [*name*], is to be considered as a satisfaction to that extent of the portion hereby appointed to her. I declare that any advancements which I have made or may make for the benefit of any of my children, to a greater amount at any one time than £——, shall be taken in satis-

Advancements in testator's lifetime to be considered as in satisfaction (*q*).

(*q*) Legacies and portions will generally be presumed to be adeemed by subsequent gifts to the legatee in the testator's lifetime, if the testator is the father of the legatee or stands to him *in loco parentis* (see *Boyd* v. *Boyd*, L. R. 4 Eq. 305; *Leighton* v. *Leighton*, L. R. 18 Eq. 459; *Re Furness*, [1901] 2 Ch. 346; *Re Peel's Settlement*, [1911] 2 Ch. 165), or if a moral obligation other than parental or *quasi*-parental is recognised by the will: *Re Pollock*, 28 Ch. D. 552. But the presumption may be rebutted (*Taylor* v. *Taylor*, L. R. 20 Eq. 155; *Re Scott*, [1903] 1 Ch. 1), and does not generally arise in the case of a mother: *Bennet* v. *Bennet*, 10 Ch. D. 479. The rule applies to gifts of residue (*Thynne* v. *Earl of Glengall*, 2 H. L. C. 131; *Montefiore* v. *Guedalla*, 1 De G. F. & J. 93; *Meinertzagen* v. *Walters*, L. R. 7 Ch. 670), but not to advances for a particular purpose, or occasional gifts of small amount (see *Schofield* v. *Heap*, 27 Beav. 93; *Ravenscroft* v. *Jones*, 32 Beav. 669; *Watson* v. *Watson*, 33 Beav. 574; *Hatfield* v. *Minet*, 8 Ch. D. 136), or in favour of a stranger as against a child: *Re Heather*, [1906] 2 Ch. 230. See, further, on this subject, Theob. Wills, 7th ed. pp. 767 *et seq.*; Robbins & Maw, 4th ed. 314 *et seq.* For other provisions as to ademption by advancement, see *post*, p. 523, Forms 48, 49. As to how advances are to be brought into account, see *Re Craven*, [1914] 1 Ch. 348, following *Re Poyser*, [1908] 1 Ch. 828. And as to interest on advances, see *Re Davy*, [1908] 1 Ch. 61; *Re Willoughby*, [1911] 2 Ch. 581; *Re Lambert*, [1897] 2 Ch. 169.

Ademption of legacies.

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faction, to that extent, of the portions hereby appointed to him, her, or them; AND I declare that all such advancements as aforesaid, already made or to be made, shall be deemed to have been made in exoneration of the estates comprised in my marriage settlement, and which I have power to charge with portions.

Advancements to be in exoneration of estates charged.

Legacy in satisfaction of covenant in a marriage settlement.

41. IN SATISFACTION of a covenant entered into by me, and contained in an indenture of settlement dated, &c., and made between [*parties*] (being the settlement executed on the marriage of my daughter, [*name*]), I hereby bequeath to the persons or person who shall be, at the time of my death, the trustees or trustee of the same settlement, the sum of £——, with interest thereon from the day of my death until payment thereof at the rate of —— per cent. per annum.

Legacy upon trusts of a marriage settlement.

42. I BEQUEATH the sum of £—— to the persons or person who shall be at the time of my death the trustees or trustee of an indenture of settlement, dated, &c., and made between [*parties*], being the settlement executed on the marriage of my daughter, [*name*], to be held by them and him upon the trusts, and with, under, and subject to the powers, provisions, and declarations in and by the same settlement declared and contained of and concerning the property thereby settled or agreed to be settled by or on the part of my said daughter, and therein collectively referred to as "the wife's fortune," or such of the same trusts, powers, provisions, and declarations as may then be subsisting or capable of taking effect with respect to the same, and so that all such trusts, powers, provisions, and declarations shall take effect with regard to the said sum of £—— hereby bequeathed in all respects (except as is hereinafter otherwise expressly provided), so far as circumstances will permit, as if the same sum had been originally comprised in the said indenture of settlement, and had formed part of the said wife's fortune therein referred to: PROVIDED ALWAYS, &c. [*insert any modification of the trusts, &c., which may be desired*].

Legacies charged on specific realty.

43. I BEQUEATH the following legacies charged upon and to be raised and paid out of my real estate situate at ——, hereinafter devised to [*devisee*], that is to say, to [*legatee*], of, &c., the sum of £——, to other [*legatee*], of, &c., the sum of £——, &c.

In case of deficiency of assets legacies

44. I DIRECT that, in case of a deficiency of assets for the full payment of all the pecuniary legacies hereinbefore bequeathed,

the said legacies shall be paid in full respectively in the order of priority in which they are hereinbefore given, so far as the assets applicable for the payment thereof will extend: PROVIDED ALWAYS, that any legacies given to a class shall rank and be paid *pari passu* as between themselves.

PECUNIARY BEQUESTS.

to be paid in order of priority of gifts.

45. I DIRECT that in case of a deficiency of assets for the full payment of all the pecuniary legacies hereinbefore bequeathed, the two legacies of £—— and £—— hereinbefore bequeathed to the said [*legatees*] respectively, shall abate rateably and in proportion before any other legacy.

Direction as to abatement of particular legacies.

46. I DIRECT that all the pecuniary legacies hereinbefore bequeathed shall be paid clear of death duties, which shall be paid out of my general personal estate.

Direction that legacies shall be free of duty.

47. PROVIDED ALWAYS, and I hereby direct that the several legacies hereinbefore bequeathed in trust respectively, or any part thereof respectively, shall not be raised (unless my executors shall in their absolute discretion see fit sooner to raise the same, or any of them, or any part thereof respectively), until the capital of such respective legacies or some part thereof respectively shall become payable; AND I further direct that until the said several legacies hereinbefore bequeathed in trust shall be fully raised and paid or appropriated, interest thereon respectively, or on such part thereof respectively as shall for the time being be unpaid or unappropriated, shall be paid or applied by my executors out of my residuary estate for the benefit of the persons for the time being entitled to the said respective legacies.

Power to postpone the raising of legacies bequeathed in trust.

48. I DECLARE that any advancements or sums of money, to the amount at any one time of £——, or more respectively, which I may make or apply for the benefit of any of my children, shall be in addition to, and not in satisfaction of any legacy or legacies or other provision or benefit made or given to him, her, or them, unless a contrary intention is therein expressed.

Advancements not to be in satisfaction of legacies.

49. I DECLARE that the sum of £—— advanced by me to my son, [*name*], and any further advances which I may hereafter make

Advances to son to be in satisfaction of legacy (*r*).

(*r*) See, as to this, *Re Kelsey*, [1905] 2 Ch. 465; and as to advances made subsequent to the will, see *Smith* v. *Conder*, 9 Ch. D. 170; *Re Scott*, [1903] 1 Ch. 1; *Re Watney*, 56 Sol. J. 109. See also *ante*, p. 521, note (*q*).

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to him [to the amount at any one time of £—— or more], and the interest payable thereon [respectively], or so much of the said sum [and further advances, if any, respectively], and interest, as shall not have been repaid at the time of my death, shall be taken in or towards satisfaction of the legacy and provisions given to and made for my said son by this my will or any codicil thereto, unless a contrary intention is therein expressed.

Charitable legacy to a hospital (*rr*).

50. I BEQUEATH to the Infirmary [*or*, Hospital] at ——, for the general purposes of the institution, the sum of £—— [free from death duties]; AND I declare that the receipt of the treasurer, or other person properly authorised to give receipts, shall be a sufficient discharge for the same.

Several charitable legacies.

51. I BEQUEATH [free from death duties] unto the Society for the Promotion of Christian Knowledge the sum of £——, and to the Infirmary at ——, in the county of ——, my native town, the sum of £——: AND I direct that such legacies respectively shall be paid to the treasurers for the time being of the said several institutions, to be applied to the general purposes thereof respectively. AND I declare that the receipts of the respective treasurers or other persons properly authorised to give receipts on behalf of the said respective societies and institutions shall be a sufficient discharge for the same respective legacies.

Legacy to the Governor of Queen Anne's Bounty (*rrr*).

52. I BEQUEATH the sum of £—— [free of death duties] to the Governors of the Bounty of Queen Anne to be applied for the augmentation of the Vicarage of ——, in the county of ——.

Gift to a sisterhood.

53. I BEQUEATH to the Mother Superior for the time being of the Sisters of Charity of the House of Charity at —— [*or*, of the Community of St. —— at ——, *or as the case may be*], to be applied in furtherance of the charitable objects of the said sister-

As to gifts of realty in mortmain.

(*rr*) As to gifts of land, or legacies charged on land, or other personal estate "savouring of realty," see, now, the Mortmain, &c. Act, 1891, ss. 3, 4 and 5, by which the restriction on such gifts is removed. Under this statute (s. 5) the land must be sold within one year from the testator's death, unless the time is extended by the Court or Charity Commissioners; and if not sold within the year, will vest (s. 6) in the official trustee of charity lands.

(*rrr*) As to grants to Queen Anne's Bounty, see the Acts 2 & 3 Anne, c. 20; 43 Geo. 3, c. 107; 1 & 2 Vict. c. 20.

hood ["House of Charity" *or* "Community"]; AND I declare that the receipt of any person being or professing to be such Mother Superior for such legacy shall be a sufficient discharge for the same. PECUNIARY BEQUESTS.

54. I BEQUEATH to the rector for the time being of the parish of ——, in the county of ——, the sum of £—— [free of death duties], for distribution at his discretion among the poor of the said parish. Gift to rector for the benefit of the poor.

55. I BEQUEATH the sum of £—— [free of death duties] to or for such charitable institution or institutions in the United Kingdom, and for such purposes of a charitable or benevolent (*s*) nature as my trustees [*or*, my acting executors or executor] (*t*) shall select, such power of selection to be exercised within one year from my death. Legacy to such charities as trustees shall select.

GIFTS OF ANNUITIES (*u*).

1. I BEQUEATH to [*annuitant*] an annuity of £——, during his life, clear of legacy duty [free of duty and of income tax (*x*)], such annuity to commence from my death (*y*), and to be paid by Bequest of annuity.

(*s*) See *Re Best*, [1904] 2 Ch. 354. As to gifts by will to charities, see Key & Elph. 10th ed. pp. 857 *et seq.*

(*t*) See *Crawford* v. *Forshaw*, [1891] 2 Ch. 261; *Re Smith*, [1904] 1 Ch. 139.

(*u*) An annuity is a general legacy, and as such is liable to abatement, in case of deficiency, with other legacies: *Re Ross*, [1900] 1 Ch. 162; *Re Metcalf*, [1903] 2 Ch. 424. For limitations of jointures, &c. charged on land, see *post*, under the heading "Strict Settlement." Apportionment is provided for by the Apportionment Act, 1870.

(*x*) Annuities should generally be given free from death duties because, the legatees having no capital out of which to pay the same, the impost is necessarily thrown on the income. Annuities are subject to legacy duty if payable out of personal estate, and to succession duty if payable out of real estate: see Customs, &c. Act, 1888, s. 21 (2). As to estate and settlement estate duty, see *Re Duke of St. Albans*, [1900] 2 Ch. 873. As to income tax, see *Re Bannerman*, 21 Ch. D. 105; *Re Sharp*, [1906] 1 Ch. 793; *L. C. C.* v. *Att.-Gen.*, [1901] A. C. 26; and see Property Tax Act, 1842, ss. 60 and 102; Income Tax Act, 1853, s. 40; Customs, &c. Act, 1888, s. 24 (3). As to the principle on which the trustees deduct the income tax, see Key & Elph. 10th ed. p. 861, note (*c*). Legacy duty.

(*y*) An annuity given by will commences from the testator's death: *Re Robbins*, [1907] 2 Ch. at p. 13. Annuity commences from testator's death.

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equal quarterly payments, the first of such payments to be made at the expiration of three calendar months from the time of my death. AND I direct my executors, as soon as convenient after my death, to purchase in their names such an annuity, either from Government or from any Public Company, or, secured upon freehold, copyhold, or leasehold, or other real or chattel real security, from any private person or persons, as my executors shall deem expedient; AND I direct that, until such purchase shall be made, the said annuity shall be paid out of my general personal estate at the times and in manner aforesaid.

Direction to purchase annuity (*z*).

Direction to pay annuity.

2. I DIRECT my trustees, out of the income of my residuary estate [the said trust fund], to pay an annuity of £——, clear of legacy duty and all other incidental expenses and deductions, to [*annuitant*], during her life [without power of anticipation (*a*)],

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Direction to purchase annuity.

(*z*) It is convenient to provide for annuities in the manner here suggested, in order to avoid keeping open the accounts and the final distribution of the general estate. It is, in general, proper to give the trustees an option to purchase elsewhere than from the Government, because it is sometimes extremely difficult, if not impossible, to comply with the rules as to proof of age, &c. which are strictly enforced in granting Government annuities. Annuities for a small amount can be purchased through the medium of a savings bank.

Legatee's right to take value of annuity.

A person for whom an annuity is directed to be purchased, as in the text, may elect to take the price or value instead of the annuity. The same right vests in his representative, if the legatee happens to have died before the purchase, and who, of course, declares his election to receive the price (*Re Robbins*, [1907] 2 Ch. 8; and *Re Brunning*, [1909] 1 Ch. 276); but where a testatrix directed her trustees to purchase Government annuities to be paid for out of the proceeds of sale of lands devised on trust for sale, an annuitant who died before the completion of the sale was held to have no claim on the value of the annuity: *Re Mabbett*, [1891] 1 Ch. 707. A clause providing that the annuitant shall in such a case not be entitled to elect to receive the price or value of an annuity is ineffectual (*Stokes* v. *Cheek*, 28 Beav. 620), unless there is a gift over (*Power* v. *Hayne*, L. R. 8 Eq. 262), or a proviso for cesser: *Halton* v. *May*, 3 Ch. D. 148; but see *Hunt-Foulston* v. *Furber*, *ibid.* 285.

(*a*) A direction to purchase an annuity for a woman without power of anticipation is not effectual (if at the date of the testator's death she is unmarried) to prevent her being entitled to claim the value of the annuity in bulk: *Woodmeston* v. *Walker*, 2 R. & M. 197; *Power* v. *Hayne*, L. R. 8 Eq. 262.

by quarterly payments, the first payment to be made at the expiration of three calendar months from my death. ANNUITIES.

3. I BEQUEATH the following annuities [free of duty], that is to say, to A. B., of, &c., during his life, an annuity of £——; to B. C., of, &c., during his life, an annuity of £——; and to E. F., of, &c., during her life, without power of anticipation, an annuity of £——; such respective annuities to commence from my death, and to be paid by equal quarterly payments, the first payment to be made at the expiration of three calendar months from my death. Annuities to several.

4. I GIVE to A. B. an annuity of £—— during his life; to C. D. an annuity of £—— during her life; and to E. F. an annuity of £—— during her life; but the two last-mentioned annuities to be without power of anticipation during any coverture by the respective annuitants. I authorise my trustees to set apart or purchase, in their names, sufficient sums of $2\frac{1}{2}$ per Cent. Consolidated Stock to satisfy the said annuities, by equal quarterly payments, clear of legacy duty and all other deductions; AND in the meantime to pay such annuities out of my general personal estate; the first quarter's payment of each such annuity to be made in full on the first day for the payment of dividends on the said stock, which shall occur after my death (from the quarter day preceding which day of payment such annuity is to be deemed to commence) (*b*); AND the last payment of each such annuity to be made in full on such one of the said dividend days as shall first occur after the death of each such annuitant respectively and no apportionment shall take place (*c*). Annuities to several. Funds to be set apart to pay annuities. Direction as to commencement and termination of annuities.

5. I DIRECT my trustees to purchase or appropriate a sufficient fund of the $2\frac{1}{2}$ per Cent. Consolidated Stock to provide for the payment of each of the annuities hereby given, [*or*, of the said annuity]; after which purchase or appropriation, the residue of my estate shall be exonerated from all liability in respect of such Direction to appropriate stock for payment of annuity.

(*b*) As to the necessity for the parenthesis, see *Irvin* v. *Ironmonger*. 2 R. & M. 531.

(*c*) This provision is intended to exclude the operation of the Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 7.

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annuities, [*or*, of the said annuity]; AND, subject thereto, the said fund shall form part of my residuary estate.

Direction to trustees to set apart a fund for annuities.

6. [*Annuities to several, Form* 3, *p.* 527]. I DIRECT my trustees to provide for the several annuities hereinbefore bequeathed, by setting apart a sufficient portion of the said trust premises [*or*, of the produce of my residuary [real and] personal estate] for that purpose, or by purchasing, in their names, an annuity or annuities of the like amount or respective amounts from Government, or from any public company. AND I declare, that, if any part or parts of the same trust premises [*or*, of the produce of my said residuary [real and] personal estate] shall be so set apart as aforesaid, and the annual produce or income of such part or parts respectively shall, at the time or respective times of their being so set apart, be sufficient to produce the annuity or respective annuities for which the same shall be set apart, the setting apart of such part or parts respectively of the said trust premises [*or*, of the produce of my said residuary [real and] personal estate] shall be deemed and taken to be a complete satisfaction of the trust to provide for the annuity or annuities for which the same shall be so set apart, and shall be a complete exoneration of the other parts of my estate therefrom, although the part or parts so set apart shall afterwards prove insufficient to provide for the same annuity or respective annuities; but the capital of such part or parts respectively shall, if necessary, be applicable to the payment of the annuity or respective annuities to provide for which the same shall have been set apart. [PROVIDED ALWAYS, and I hereby direct, that the said annuities respectively hereinbefore bequeathed shall be, as to such of the said annuitants as are females respectively, without power of anticipation during any coverture.] [AND I direct, that no annuitant shall be entitled to receive the value of his or her annuity in lieu thereof, and if any of them [the said *annuitants*], whether under disability or not (*d*), shall assign, dispose of, or charge the annuity hereinbefore bequeathed to him or her, or any part thereof, or in case

Proviso in case fund set apart proves insufficient.

In case of deficiency of funds set apart, annuities to be paid out of capital.

Annuities to be for inalienable use of female annuitants.

Proviso for cesser on alienation (applicable to male or female annuitants).

As to restraints on alienation.

(*d*) The established doctrine is, that a *feme covert* may be restrained from alienation without any gift over or clause of cesser; but a person not under coverture, whether man or woman, cannot be so restrained: see *Power* v. *Hayne*, L. R. 8 Eq. 262; *Halton* v. *May*, 3 Ch. D. 148.

he or she shall become bankrupt, then, and in every such case, the said annuity with respect to which the same shall happen shall immediately thenceforth cease, as if he or she were dead, to all intents and purposes whatsoever; AND thereupon the portion of the said trust premises [*or*, of the produce of my residuary [real and] personal estate] so set apart as aforesaid, or the unapplied part thereof, shall fall into and form part of my residuary personal estate.] ANNUITIES.

Annuity to wife reducible on re-marriage.

7. I BEQUEATH to my wife —— an annuity of £—— [free of duty] during her widowhood, commencing from my death; AND in case she marries again, then a reduced annuity of £—— [free of duty] during the remainder of her life, without power of anticipation, such respective annuities to be payable by equal quarterly [half-yearly] payments.

Annuity to two persons and survivor of them.

8. I BEQUEATH to A. B., of, &c., and C. D., of, &c., and the survivor of them, an annuity of £—— [free of duty] during their joint lives, and the life of such survivor, such annuity to commence, &c. [*as in Form* 1, ante, *p.* 525].

Annuity for wife to be for maintenance of herself and daughters until marriage.

9. PROVIDED ALWAYS, and I hereby declare, that the annuity hereinbefore given to my said wife during her widowhood is so given upon trust for the maintenance and mutual benefit of herself and my daughters, or such of them as shall for the time being be living and unmarried, and until their respective marriages in the lifetime of my said wife; but so, nevertheless, that my said wife shall not be liable to account so long as she shall maintain my said daughters to the satisfaction of my trustees.

General directions as to annuities: to commence from testator's death; payable quarterly.

10. I DIRECT, that (subject to any special directions contained to the contrary in my will or any codicil thereto), every annuity given by this my will, or any codicil hereto, shall commence and be computed from the time of my death, and shall be payable, clear of death duties, and other incidental expenses and deductions, quarterly, on such days as in the opinion of my trustees shall be most convenient with regard to the fund or provision for the payment thereof [*or*, on the usual quarter days]; the first of such payments to be made on such of the said days as shall first happen after my death, either out of the fund or funds to be appropriated for the same, or out of my general personal estate, and to be

ANNUITIES.

Apportionment.

proportional to the time which shall then have elapsed from the day of my death.

Female legatees restrained from anticipation.

11. EVERY annuity given by my will, or any codicil thereto, to a female shall be without power of anticipation.

Cesser on alienation (*e*).

12. IF ANY act or event shall be done or happen (either before or after my death) whereby any annuity hereby given, or any part thereof, would, if belonging absolutely to the annuitant, become vested in or charged in favour of some other person or persons, then such annuity shall thereupon cease as if the annuitant were dead.

If a fund is appropriated for annuities, general estate to be exonerated.

13. IF MY trustees appropriate for paying any annuity or annuities a fund or funds which at the time of such appropriation shall produce a sufficient income to answer the same, such annuity or annuities shall thenceforth be exclusively charged on such fund or funds in exoneration of the residue of my estate, and shall in case of any future deficiency of the income of such fund or funds be made up out of the capital thereof.

Trustees may vary times of payment.

14. I DIRECT that (subject to any special directions in my will or any codicil thereto to the contrary), every annuity given by my will or any codicil thereto shall be computed from my death, and be paid half-yearly, on such days as may be most convenient with regard to the respective funds out of which the same shall be payable; AND that every such annuity shall be made good for the full period from the day of my death to the day of the determination thereof (otherwise than by forfeiture), by apportionment if necessary; AND that my trustees may from time to time vary the days of payment of any annuity in case a change of investment should render it convenient so to do, and in such case a proportional part shall be paid in respect of the broken period occasioned by such change.

Charge of annuities on real estate.

15. I CHARGE the annuities given by this my will, together with

Apportionment.

(*e*) Under the proviso for cesser it is conceived that the annuity would not be apportionable; but if it were given over, it clearly would be apportionable for the benefit of the annuitant's assignee: see *Shipperdson* v. *Tower*, 8 Jur. 485; *Clive* v. *Clive*, L. R. 7 Ch. 433.

the duty thereon, exclusively on my real estates (*f*) [*or*, "on the freehold [*or*, 'leasehold'] messuages, lands, and hereditaments hereinafter devised to ——-"], and if the same be deficient, such annuities shall abate rateably. ANNUITIES.

16. I DIRECT that all the annuities given by my will or any codicil thereto shall be provided for and paid to the respective annuitants clear of all death duties (*f*) and other expenses. Annuities to be free of duty.

17. AND I further direct and declare that none of the legacies to my children hereinafter bequeathed shall be paid until full and adequate provision shall have been made for the payment of the annuities of £—— and £—— hereinbefore bequeathed. Annuities to have priority over legacies.

18. AND, for the purpose of facilitating the execution of the trusts of the said annuity, I authorise my trustees, while my said son, or any wife or child of my said son, shall be in Australia or elsewhere abroad, to employ any agent or agents in Australia or elsewhere abroad, and to delegate to such agent or agents all and every or any of the discretionary or other powers or authorities which my trustees would have, or might personally exercise, in relation to the said annuity, without being answerable for the acts or defaults of any such agent or agents. Power to appoint agents in Australia, and to delegate powers.

19. MY TRUSTEES may, at their discretion, continue any annuities or charitable or other allowances, donations, or subscriptions which I shall have been paying in my lifetime, or any part thereof, during such time not exceeding —— years (*g*), as they may think fit. Power to continue testator's allowances, subscriptions, &c.

SETTLED LEGACIES (*h*).

1. I DIRECT my trustees, within a year from my death, to invest the said sum of 4,000*l*. in their names, in or upon any of the investments hereby authorised, but not in any other mode of investment; with power to appropriate for that purpose any security or securities of any of the kinds aforesaid which I may have at my Direction to invest 4,000*l*., or appropriate securities to that amount;

(*f*) By the stat. 51 Vict. c. 8, s. 21 (2), legacies by way of annuity charged on or payable out of the proceeds of sale of real estate are liable to succession duty, including the additional duties imposed by that Act.

(*g*) Regard must be had to the rules against perpetuities.

(*h*) See also *post*, "Trusts of Residue," pp. 562 *et seq.*, where alternative forms of trusts will be found.

SETTLED LEGACIES.

in trust for nephew for life, and after his death for his issue.

death at the value thereof at the time of such appropriation; And with power, from time to time, to vary such investment; And to pay the income therefrom to my nephew, [*name*], during his life, and after his death to transfer the same in such manner for the benefit of any of his child or children or other issue (born in his lifetime), as he shall by deed or will appoint, and, subject thereto, to transfer the same trust fund unto such child or children of my said nephew as being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, in equal shares [as between sons or as between daughters, but so that the share of a son shall be double the share of a daughter]. Provided, that no child shall take, both by appointment and in default of appointment, a greater share than he or she would have taken if no appointment had been made. I authorise my trustees, after the death of my said nephew, at their discretion, to apply for the benefit of any child or children not more than one-half of such child's presumptive share. And if there shall be no child of my said nephew who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to any such appointment as aforesaid, I declare that my trustees shall hold the said trust fund upon trust to pay, apply, and transfer the same, and the future income thereof, upon such trusts and in such manner as are herein declared and mentioned with respect to my residuary personal estate.

Hotchpot.

Advancement.

Bequest of a sum, with interest till payment, to trustees, upon trust for investment;

2*a*. I bequeath to my trustees the sum of £——, with interest thereon at the rate of 4 per cent. per annum from the day of my death, and clear of death duties and all other deductions, upon trust, to invest the same sum in or upon any of the investments hereby authorised, with power to vary such investments; And I direct that my trustees shall stand and be possessed of and interested in the said trust moneys, and the investments representing the same (hereinafter called "the trust fund") (*hh*). Upon trust, from time to time to pay the income arising therefrom to my said daughter, [*name*], for her life, but without power of anticipation; And from and after her death,—

trusts of settled legacy for inalienable use of married daughter for life;

power for daughter to appoint life

2*b*. Upon trust, in case my said daughter, [*name*], whether

(*hh*) It may be convenient, if there are other settled funds, to describe this fund as "——'s trust fund," giving the name of the legatee.

SETTLED LEGACIES.

married or sole, shall by deed, or will, or codicil so appoint, to pay unto any surviving husband (born in my lifetime) of my said daughter, during his life or for any less period to be so appointed by my said daughter [any part not exceeding one-half of] the income of the trust fund; AND, subject to any such payment to be so appointed as aforesaid, Upon trust to pay or transfer the trust fund, unto or among such one or more of the children, or more remote issue, of my said daughter (such issue to be born in the lifetime of my said daughter), and at such time or times, and, if more than one, in such shares and proportions, and subject to such conditions, restrictions, and limitations, and generally in such manner, for the benefit of some or one of such children or issue, as my said daughter, [*name*], shall, whether covert or sole, by deed, revocable or irrevocable, or by will or codicil appoint. PROVIDED that no child or other issue of my said daughter, [*name*], shall take a vested or absolute interest under any such appointment as aforesaid, until such child or issue shall attain the age of twenty-one years, or (being a girl) shall attain that age, or be married (*i*); AND in default of and subject to any such appointment, upon trust for such child or children of my said daughter, [*name*], as (being a son or sons) shall attain the age of twenty-one years, or (being a daughter or daughters) shall attain that age or be married, and also the child or children of any son of my said daughter who shall die under the age of twenty-one years, and if more than one, to be divided between or among them in equal shares and proportions, as between brothers and sisters, but so that the child or the children collectively of any deceased son of my said daughter shall take only the share which such son would have taken if living, and if more than one, in equal shares and proportions. PROVIDED ALWAYS, that no child or grandchild of my said daughter, [*name*], who or whose issue shall take any share or shares of the trust fund by virtue of any appointment to be made by my said daughter under the power hereinbefore contained shall, without any express direction to that effect in such appointment to be contained, be entitled to any share of the unappointed part of the trust fund under the limitations or trusts in

interest in a moiety to husband;

trusts for daughter's issue, as she shall appoint;

appointee not to take a vested interest while under age and discovert;

in default of appointment, for her sons at twenty-one or daughters at twenty-one or marriage. Substitution of children of sons dying under twenty-one;

hotchpot clause;

(*i*) The design of this clause is to prevent an absolute appointment to a child at a very early age and in precarious health, in order that at the death of the child the appointed fund may devolve to the parent, who, on taking out administration, would become entitled to the personal property of such deceased.

As to restriction on appointments to infants.

SETTLED LEGACIES.

default of appointment hereinbefore contained, unless such child or grandchild shall bring the share or shares appointed to him or her into hotchpot, and account for the same accordingly: And in case there should be no child of my said daughter, [*name*], who (being a son) shall attain the age of twenty-one years, or (being a daughter) shall attain that age or be married, or if there shall be no child of any son of my said daughter who shall die under the age of twenty-one years, then (subject to any such appointment as aforesaid): upon trust to pay or transfer the trust fund, and the income thereof, unto or for the benefit of such person or persons, upon such trusts, for such purposes, and in such manner and form as my said daughter, [*name*], shall, by deed, or will, or codicil, appoint: And in default of such appointment, and so far as any such appointment shall not extend: Upon trust for such person or persons as, under the statutes for the distribution of the personal estates of intestates (*ii*), would be entitled to the same trust fund in case my said daughter, [*name*], had died absolutely entitled thereto as part of her personal estate and intestate, and without leaving a husband [*or*, upon trust for my said daughter, her executors and administrators]: Provided always, and I hereby declare that it shall be lawful for my trustees, at any time or times in the lifetime of my said daughter, [*name*], with her consent in writing, and after her death [with the consent in writing of her surviving husband (if any), and after the death of my said daughter and of her surviving husband (if any)] at the discretion of my trustees, to raise any part or parts not exceeding in the whole one-half of the fund or share to which any child or issue of my said daughter shall be presumptively or actually entitled, and to pay or apply the same for the advancement or benefit of such child or issue, in such manner as my trustees shall think fit.

in default of issue to take under foregoing trusts,

power for daughter to appoint generally by will, or, while discovert, by deed; in default of appointment for daughter's next of kin;

power to advance portions.

Legacy in trust for widow for life;

3. [*Legacy to trustees, with power to invest and vary securities, &c., as in Form* 2]. And I direct that my trustees shall hold the said sum of £——, and the investments representing the same (hereinafter called "the trust fund") (*j*), upon trust to pay the income arising from the trust fund unto my sister-in-law [*name*], the widow of my late brother [*name*], for her life; And after her death to apply a competent part of the trust fund for her funeral expenses, in case she should not leave sufficient property for that

on her death to apply part of capital for her burial; and to divide the surplus

(*ii*) 22 & 23 Car. 2 and 1 Jac. 2, c. 17.
(*j*) See note (*hh*), p. 532.

SETTLED LEGACIES.

purpose; AND, subject thereto, to divide the trust fund, or the residue thereof, among such of her five children, namely [*names*], as shall be living at the time of the death of the survivor of myself and my said sister-in-law, and such child or children then living of any of her said children who may then be dead, as shall attain the age of twenty-one years, or marry under that age, in equal shares and proportions, as between or among brothers and sisters; but so that the child or the children collectively of any such deceased child of my said sister-in-law shall take such share only as his, her, or their parent would have taken if living. [*Add here, or in a subsequent part of the will, provision for advancement of infant grand-nephews and grand-nieces, or of minors generally*, post, *p.* 585.]

among the survivors of five children and the issue of those who may be dead.

4. I BEQUEATH to my trustees the sum of £——, to be retained and appropriated by them within six calendar months after my death, and, if not then appropriated, with interest at 4 per centum per annum from the expiration of the said six months, upon trust, to invest [*power to invest and vary investments, Form* 1 *or Form* 2], and to stand possessed thereof, upon the trusts following (that is to say), upon trust, to pay the income of the said trust fund to my aunt [*name*], for her life, but without power of anticipation, subject nevertheless to the proviso hereinafter contained; AND from and after her death, upon trust, to pay or transfer the said trust fund unto and between such of the daughters of my said aunt, namely, [*names*], as shall be living at my death, or their respective executors, administrators, or assigns, in equal shares; AND I declare, that in case at any time or times hereafter the said [*aunt*] should, from infirmity or any other cause, be incapable of giving a discharge for the said income, it shall be lawful for my trustees to apply the same in such manner for her benefit as they, in their discretion, shall think proper (*k*): PROVIDED ALWAYS, that in case the said [*aunt*] should at any time, while discovert, assign or dispose of the said income of the said trust fund, or any part thereof or interest therein, or in case by any means whatsoever the same should [*or*, but for

Legacy to trustees, to be invested;

in trust for inalienable use of testator's aunt (a married woman) for life;

and after her death, upon trust for her daughters, *nominatim*;

if *cestui que trust* becomes imbecile, &c., trustees may apply income for her benefit;

proviso for cesser of life interest on alienation.

(*k*) This trust is adapted to the case of a person who is subject to attacks of lunacy or labours under any other species of mental imbecility. A trust in favour of a deaf and dumb person also requires some such provision.

As to trusts in favour of persons of weak mind, &c.

SETTLED LEGACIES.

this present proviso, would] become vested in or payable to any husband of the said [*aunt*], or any other person or persons, then and in such case the trust hereinbefore declared in favour of the said [*aunt*] shall immediately thereupon cease, and the said income shall, during the remainder of her life, be applied by my trustees to and for the benefit of her, the said [*aunt*], or all or any of her said daughters, or their or her issue for the time being, or some or one of such objects exclusively, and in such shares, if more than one, as my trustees in their absolute and uncontrolled discretion shall think proper (*l*).

Legacies to unmarried daughters to vest immediately, but payable at the death or marriage of the wife; power of advancing one-half on marriage;

5. I BEQUEATH unto each of my five daughters, [*names*], or such of them as shall be living at the time of my death, the sum of £——. AND I direct that my said five daughters shall have vested interests in their respective legacies immediately upon my death; but the payment thereof shall be postponed until after the death or marriage as aforesaid of my said wife, and without interest in the meantime. PROVIDED ALWAYS, that in case any of my five daughters hereinbefore named should happen to marry during the widowhood of my said wife, with the consent or subsequent approbation of her or their guardian or guardians for the time being, then it shall be lawful for my trustees [*or*, the trustees or trustee for the time being of my will] [*or*, of the trust fund hereinafter provided for the payment of the said several legacies of £—— each], during the widowhood of my said wife, with her consent (testified by writing under her hand), to raise and pay to each such daughter so marrying as aforesaid one moiety of her said legacy of £——, for her absolute use and benefit. AND I declare that it shall be lawful for my trustees [*or*, the said trustees or trustee] and my said wife, if they should think proper, to settle the said moiety of the legacy or respective legacies, the payment whereof shall be accelerated under this present provision, of any daughter or daughters of mine so as aforesaid marrying during the widowhood of my said wife, upon trust for the benefit of such daughter or daughters, and her or their intended husband or husbands, and

power to wife and trustees to settle moiety of legacies of daughters marrying during widowhood of wife.

(*l*) As to the effect of a discretionary trust of this nature, see *Re Coleman*, 39 Ch. D. 443, from which case it would seem that in the event of an assignment by the tenant for life the trustees could not pay any part of the income to the tenant for life, as any income so paid would pass by the assignment.

the issue of such marriage or marriages, or for the benefit of some one or more of such objects, in such manner in all respects, and with such accompanying powers and provisions as my said wife and trustees (either with or without the concurrence of such marrying daughter or daughters) shall think proper. And I direct and declare that my trustees, upon their paying or transferring to the trustees or trustee of any settlement or settlements to be made as aforesaid, the moiety so settled of the legacy or legacies of such daughter or respective daughters of mine marrying as aforesaid, shall be exonerated and discharged from all further responsibility in respect thereof.

SETTLED LEGACIES.

BEQUESTS OF LEASEHOLDS (*m*).

1. I bequeath my leasehold messuage[s] or dwelling-house[s], &c., with the appurtenances, unto [*legatee*], of, &c., his executors, administrators, and assigns, for all the residue unexpired at the time of my death, of the term[s] for which the same premises [respectively] are holden, he, the said [*legatee*], his executors, administrators, and assigns, paying the rents reserved by, and at his and their own costs performing and observing the lessee's covenants and conditions contained in the [several] lease[s] under which the same premises are holden [respectively], and keeping my general estate indemnified in respect thereof.

Bequest of house and stabling in London to one.

2. I bequeath my leasehold messuage or dwelling-house, now in the occupation of [*tenant*], with all rights, easements, and appurtenances belonging to, or reputed to belong thereto, or held or enjoyed therewith (*n*), unto [*trustee*], of, &c., and [*trustee*], of, &c.

Bequest of leasehold house and grounds, &c. in the country to trustees.

(*m*) For a form of bequest of leaseholds with an appointment of the legatee as special executor in respect thereof, see *ante*, p. 474, Form 10. Leaseholds are "real property" for the purpose of sect. 1 of the Succession Duty Act, 1853.

(*n*) A gift of a house "as now in the occupation of A." will not of itself pass an easement enjoyed by A. as occupant: *Polden* v. *Bastard*, L. R. 1 Q. B. 156. The necessity for inserting the words in the text is not done away with by sect. 6 of the Conveyancing Act, 1881, as that section imports "general words" only into "conveyances" as defined by sect. 2 (v.) of the Act. The rule laid down in *Palmer* v. *Fletcher*, 1 Lev. 122, that under a conveyance *inter vivos* the grantee is entitled to

BEQUESTS OF LEASEHOLDS.

[*or*, the trustees hereinbefore appointed], their executors, administrators, and assigns, for all the residue unexpired at the time of my death, of the term for which the same premises are holden, and subject to the rent reserved by, and to the lessee's covenants and conditions contained in the lease under which the same premises are holden, upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of the same premises [*or*, my trustees], shall, by and out of the rents and profits thereof [*or*, out of the income of my general personal estate], pay the rent reserved by the said lease, and all necessary outgoings in respect of the said leasehold premises, and the expenses of keeping the same premises insured and in good repair, and otherwise performing and observing the lessee's covenants and conditions contained in the said lease; AND upon trust to pay the [residue of] the rents and profits of the said leasehold premises unto my wife, [*name*], during her life; AND, after her death, upon trust to assign the same premises unto my son, [*name*], his executors, administrators, or assigns, absolutely (*o*).

Bequest of house and furniture, &c., to wife for life or during widowhood;

3. I BEQUEATH my leasehold messuage or dwelling-house, with the stabling, &c. held therewith, situate, &c., which premises I hold under a lease, dated, &c., for all the residue (if any) which shall be unexpired at the time of my death, of the term for which the same premises are holden, and also all my fixtures, furniture, and household effects (*p*) in, about, and belonging to the said leasehold premises unto my wife [*name*], during her life [or until she shall marry again], she paying all rents, taxes, rates, assessments, and outgoings in respect of the said leasehold premises, and keeping the same insured against loss or damage by fire to the full value thereof, and also keeping the said furniture and effects

such easements and rights as are necessary for the enjoyment of the property in the state in which it was enjoyed by the grantor at the time immediately preceding the grant, applies to gifts by will: *Phillips* v. *Low*, [1892] 1 Ch. 47; and see *Taws* v. *Knowles*, [1891] 2 Q. B. at p. 570.

(*o*) For a form giving to the remainderman full power of enforcing the tenant for life's obligations to repair, &c., see *post*, p. 550, Form 27. These powers would, of course, in the case of leaseholds, be given to the remainderman, "his executors, administrators, or assigns."

(*p*) For full and particular bequests of furniture and effects, see *ante*, p. 482, Forms 14 *et seq.*

insured and in good preservation, fair wear and tear excepted; AND from and after the death [or second marriage] of my said wife I bequeath the said leasehold premises for all the residue then unexpired of the said term, and the said fixtures, furniture, and effects to my son, [*name*], his executors, administrators, and assigns, absolutely (*o*).

BEQUESTS OF LEASEHOLDS.

with remainder to son absolutely.

4. I BEQUEATH to the said [*trustees*], their executors, administrators, and assigns, ALL THAT, my leasehold messuage, situate, &c., and the stables, buildings, and other appurtenances thereunto belonging, for all the term and interest which I shall have therein at the time of my death, upon trust to permit my said wife to reside in and occupy the said leasehold premises so long as she shall think proper, she paying the ground rent, taxes, and rates payable in respect of the same, and keeping the said premises in good and tenantable repair, and insured in the sum of £—— against loss or damage by fire during the period of such residence; and from and after the death of my said wife, or so soon as she shall decline or, for the space of six calendar months consecutively, cease to reside in or occupy the said leasehold premises (*q*), then I direct that my trustees shall sell the said leasehold messuage and premises. PROVIDED ALWAYS, that no purchaser of the said leasehold premises shall be bound to inquire whether my said wife has so declined or ceased to reside in and occupy the same or not. AND I direct that the money to arise by such sale shall fall into and form part of my residuary personal estate. AND I empower my trustees, in their discretion (notwithstanding the trusts aforesaid), to postpone the sale of the said leasehold premises so long as they shall think proper, and during such postponement to pay the net rents and profits thereof to the person or persons for the time being entitled to the income of my residuary personal estate. AND I

Bequest of leasehold messuage to trustees to permit his wife to occupy it for her residence; and after her death, or if she should decline to reside, upon trust to sell same;

moneys arising from sale to form part of personal estate;

power to postpone sale

(*o*) See note (*o*) on opposite page.

(*q*) Where a testator imposes an obligation to reside, it should be explicitly stated what length of continuous absence amounts to a breach of the condition: see, on this point, *Doe* v. *Steward*, 3 N. & M. 372; *Re Moir*, L. R. 25 Ch. D. 605. See also, as to conditions of residence, *Wynne* v. *Fletcher*, 24 Beav. 430; *Walcot* v. *Botfield*, Kay, 534; *Clavering* v. *Ellison*, 7 H. L. C. 707; *Parry* v. *Roberts*, 19 W. R. 378; *Dunne* v. *Dunne*, 7 De G. M. & G. 207; *Re Wright*, [1907] 1 Ch. 231; and as to condition of residence in case of an infant, see *Partridge* v. *Partridge*, [1894] 1 Ch. 351.

Conditions of residence.

BEQUESTS OF LEASEHOLDS.

power to lease.

further empower my trustees, at their discretion, until the said leasehold premises shall be sold, to lease the same premises for any term or terms in possession, not exceeding —— years, at the best rent that can be obtained without taking fine or premium, subject to a power of re-entry in case the rent should be in arrear for twenty-one days. And I declare that my trustees shall be fully indemnified out of my residuary estate against all costs, damages, losses and expenses which may be incurred by them by reason of the non-payment of the rent reserved by, or the non-observance or non-performance of the covenants contained in the lease under which the said premises are holden, or otherwise in respect of the said leasehold premises.

Bequest of renewable leaseholds to trustees;

to pay rents, and perform covenants of lease;

to raise money to renew out of the rents or by mortgage;

and to renew;

trustees not to be bound to renew;

5. I BEQUEATH my leasehold messuages, lands, and tenements [*parcels*], with their appurtenances, unto the said [*trustees*] for all such term or interest as I shall be entitled to therein at my death, upon the trusts hereinafter declared concerning the same (that is to say): Upon trust, in the first place, from time to time, by and out of the rents and profits of the same premises, to pay and perform the several rents and covenants reserved by, and contained in the lease or leases now subsisting of the same premises respectively, or which by and in any renewed lease or leases thereof, to be from time to time taken, shall be reserved and contained, on the part of the lessee or lessees to be paid and performed: And, upon further trust, from time to time, by and out of the rents and profits of the said leasehold premises, or by mortgaging the same or any part thereof, to raise such sum or sums of money as shall be sufficient to defray the expenses of the fines and other charges of renewing the now subsisting lease or leases, or any other lease or leases hereafter to be taken of the same premises, when and as often as the same shall expire, or in the usual course or custom of such leases shall become renewable: And from time to time to renew or to endeavour to renew the same accordingly. And I empower my trustees for the purposes aforesaid, to surrender the present or any future lease or leases to be taken of the said leasehold premises when and as the same shall become renewable as aforesaid. Nevertheless, I hereby declare that the trusts and directions hereinbefore contained shall not render it imperative or obligatory on my trustees to renew the lease or leases by which the said leasehold premises shall for the time being be

holden when and as the same shall become renewable, if the lessors shall demand or require a fine or premium for the granting thereof which my trustees shall deem to be excessive and unreasonable (*r*): AND I further declare, that it shall not be incumbent on any mortgagee or mortgagees of the said leasehold premises to inquire into or ascertain the necessity or propriety of any mortgage or mortgages made or executed or purporting to be made or executed by my trustees by virtue of the power in that behalf hereinbefore contained: AND I direct that, subject to the aforesaid trusts, my trustees shall stand and be possessed of the said leasehold premises, in trust for such son of mine living at the time of my death as shall first or alone attain the age of twenty-one years, for his absolute use and benefit. AND if I should have no son living at my death who shall attain the age of twenty-one years, then in trust for such daughter of mine living at my death as shall first or alone attain the age of twenty-one years, or marry under that age with the consent in writing of her guardian or guardians for the time being, for the absolute use and benefit of such daughter; yet so that an elder daughter attaining the age of twenty-one years, or marrying under that age with such consent as aforesaid, shall take in preference to a younger daughter who may happen to marry with such consent as aforesaid before such elder daughter shall so attain the age of twenty-one years or marry. AND if I should not have any son living at my death who shall attain the age of twenty-one years, or any daughter who shall attain the age of twenty-one years, or marry with such consent as aforesaid, then, and in such case, as to, for, and concerning the said leasehold premises, from and after such default or failure of children of mine as aforesaid, in trust for my said wife, [*name*], for her absolute use and benefit: PROVIDED ALWAYS, and I hereby direct, that in the meantime and until the said leasehold premises hereinbefore by me bequeathed shall vest absolutely, under the trusts aforesaid, in any son or daughter of mine, or until there shall be a failure or default of children of mine, entitled in expectancy under the trusts aforesaid, my trustees shall from time to time receive the rents and profits of the said premises, and lay out

BEQUESTS OF LEASEHOLDS.

indemnity to mortgagees;

subject to the aforesaid trusts,

in trust for such son of testator as shall first attain twenty-one;

if no such son,

in trust for such daughter as shall first attain twenty-one or marry;

if no such son or daughter,

in trust for his wife absolutely;

power to accumulate rents during minorities, and to invest the accumulations in the purchase of lands;

(*r*) It seems advisable that clauses directing tenants for life or trustees to renew leases should not be so framed as to make it imperative on them to submit to unreasonable terms.

As to giving trustees a discretion in regard to renewals.

BEQUESTS OF LEASEHOLDS.

and invest the same or so much and such part thereof as shall not be wanted for any of the purposes hereinbefore declared concerning the same, in their names in or upon any of the investments hereby authorised (with power from time to time to vary such investments), and shall receive the dividends, interest, and annual produce of such investments, and lay out and invest the same in or upon other investments of the like nature (with power from time to time to vary such investments, as occasion shall require); AND shall from time to time repeat such investments, so that all the resulting income and produce for the time being may, during such suspense as aforesaid, accumulate in the way of compound interest, AND shall, at the end of such period of accumulation, stand possessed of the said accumulations and the investments thereof in trust for the person who shall become entitled to the said leasehold premises under the trusts hereinbefore contained: PROVIDED ALWAYS, and I declare that it shall be lawful for my trustees, at any time or times during such period of accumulation, trusts, and purposes hereinafter expressed concerning my residuary real estate hereinafter devised, or as near thereto as the nature or quality of the tenure and circumstances will then admit of. PROVIDED ALWAYS, and I declare that it shall be lawful for my trustees, at any time or times during such period of accumulation, or after the determination thereof, to apply all or any part of the said accumulated fund in payment of the fine or fines or other expenses of any such renewal or renewals of lease as aforesaid, or of any mortgage debt or debts which shall or may have been previously created for the purpose of enabling my trustees to effect the same renewal or renewals respectively.

power to apply any part of the accumulations during minorities towards paying the fines on renewals.

Bequest of leasehold ground rents.

6. I BEQUEATH all my improved ground rents issuing out of six leasehold messuages or tenements situate and being Nos. — to — inclusively, in —— Street, in the City of ——, for all the residue unexpired at my death of my term and interest in the same premises respectively to [*legatee*], of, &c., his executors, administrators, and assigns, absolutely.

SPECIFIC DEVISES.

Devise of freehold messuage and lands to one absolutely (*ss*).

1. I DEVISE all my freehold mansion-house, with the stables, coach-house, outbuildings, gardens, and closes of land belonging to or held with the same, situate at ——, in the county of ——, containing in the whole —— acres, —— roods, and —— poles, or thereabouts, and commonly known as ——, now in the occupation of [*occupant*] (*t*), with all rights, easements, and appurtenances belonging to or reputed to belong thereto, or held and enjoyed therewith (*u*), to the use of [*devisee*], of, &c., his heirs and assigns [*or*, in fee simple]. [AND I bequeath to the said [*devisee*] all rents and profits of the same hereditaments which shall be due or accruing due to me at my death, subject to the payment thereout of all rates, taxes, and outgoings due or accruing due at my death in respect of the same hereditaments, or properly chargeable against the same in the ordinary course of management.]

Bequest of rents due at testator's death.

Devise of copyholds to one absolutely (*x*).

2. I DEVISE all my copyhold messuage, lands, tenements, and hereditaments, situate and being at ——, in the county of ——, containing, &c. [*ut supra*], to such uses as [*devisee*], of, &c., shall by deed or will appoint; and in default of, and subject to any such appointment, to the use of the said [*devisee*], his heirs and assigns.

Devise of freeholds to a

3. I DEVISE all [*parcels*], with the appurtenances thereof, to the use of [*devisee*], the wife of [*name*], of, &c., her heirs and

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(*ss*) For a form of devise to trustees, see *post*, p. 601, Form 1.

Reference to occupation.

(*t*) Disputes often arise as to the local extent, &c. of devised lands, and clearness in this respect is important. Where lands are described merely as "all my lands *at* A. in the occupation of B.," only lands actually in the occupation of B. will pass: *Slingsby* v. *Grainger*, 7 H. L. C. 273; *Travers* v. *Blundell*, 6 Ch. D. 436. The question is which is the leading description: *Re Brocket*, [1908] 1 Ch. 185. But if the testator give a complete description of his estate, *e.g.*, "all my lands called 'Whiteacre' at A. in the occupation of B.," all the estate may pass, though part may not answer the description as to occupation: *Goodtitle* v. *Sotheran*, 1 M. & S. 299; *Down* v. *Down*, 7 Taunt. 343; *Re Boulter*, 4 Ch. D. 241.

(*u*) See, as to the necessity for inserting these words, *ante*, p. 537, note (*n*).

As to giving devisee of copyholds a power of appointment.

(*x*) This form of devise of copyholds is useful, as it saves the expense of the admission of the devisee, and a surrender by him to a purchaser on sale of the property.

SPECIFIC DEVISES.

assigns, but so that she shall not while under any [*or*, her present] coverture have power to dispose of or charge the said hereditaments and premises, or any part thereof, or the future rents and profits thereof, by way of anticipation.

woman with restraint on anticipation.

Devise of freeholds or copyholds for the use of a woman, inalienable during coverture (*y*).

4. I DEVISE all that [*parcels*], to such uses as my daughter, [*name*], shall at any time or times (being unmarried) by deed appoint; AND, subject thereto, to the use of my said trustees, their executors, administrators, and assigns, during the life of my daughter, [*name*], in trust for her inalienable use during her life; AND, subject thereto, to such uses as my said daughter shall (whether married or single) by will appoint; AND, subject thereto, to the use of the person or persons who at my daughter's death would be entitled thereto by descent in case she had died seised thereof in fee simple by purchase and intestate, if more than one in equal shares as tenants in common, and his, her, or their heirs and assigns.

Devise of lands to an infant, with appointment of trustees for management, &c.;

gift over in case of death under twenty-one.

5. I DEVISE all [*parcels*] to the use of [*devisee*], of, &c., his heirs and assigns: AND if the said [*devisee*] shall not be of age at the time of my death, I appoint my trustees to be trustees during his minority for the purposes of the management of the same premises and the receipt and application of the income thereof, and for all other purposes mentioned in the 42nd section of the Conveyancing Act, 1881: But if the said [*devisee*] shall die in my lifetime [without leaving issue living at my death], or shall die afterwards before attaining the age of twenty-one years without leaving issue living at his death, then I devise the same premises to [*other devisee*], of, &c., his heirs and assigns.

Specific devise of real estate and bequest of leaseholds.

6. I DEVISE and bequeath all my freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments situate in the several parishes of —— and ——, in the county of ——, unto and to the use of [*devisee*], of, &c., his heirs, executors, adminis-

(*y*) These limitations will have the effect of preventing the property (unless the power is exercised by the devisee) from being liable, as her separate estate, for her debts contracted during coverture: see *Re Harvey's Estate, Godfrey* v. *Harben*, 13 Ch. D. 216; see also *Pike* v. *Fitzgibbon*, 17 Ch. D. at p. 466; *Hodges* v. *Hodges*, 20 Ch. D. 749; *Re Roper*, 39 Ch. D. 482. As to the effect of sect. 4 of the Married Women's Property Act, 1882, see Wolstenholme's C. A. 10th ed. p. 325.

trators, and assigns, according to the nature and tenure of the same premises respectively. SPECIFIC DEVISES.

7. I DEVISE all [*parcels*] to the use of [*devisee*], of, &c., his heirs and assigns, if he shall survive me; AND if he shall die in my lifetime leaving issue surviving me, then I devise the same hereditaments and premises to the use of the heirs or devisees of the said [*devisee*], as part of his estate, in such manner as the same would have devolved if the said [*devisee*] had survived me and had died seised thereof immediately after me. Devise of freeholds so as not to lapse (*z*).

8. I GIVE my freehold and copyhold lands at ——, which were conveyed and covenanted to be surrendered to me by an indenture, dated, &c., to such uses as my nephew, [*name*], shall by deed or will appoint; AND, subject thereto, to the use of my said nephew, his heirs and assigns; AND, in case a contract which is now pending for the sale thereof be carried into execution, or in case the same lands, or any part thereof, be under any circumstances sold, then I give to my said nephew the purchase-money which I or my executors shall receive for the same. AND I direct that all the costs of and incident to the said contract, whether the same be completed or not, shall be paid [out of my residuary personal estate and not] out of the said purchase-money. Specific freeholds to nephew in fee, with power of appointment; if sold, the purchase-money in lieu (*a*).

9. I GIVE my messuage, &c. at ——, which I hold under a lease, dated, &c., but the freehold of which I have recently contracted to purchase, to [*devisee*], of, &c., his heirs, executors, administrators, and assigns. AND in case the purchase thereof shall not be completed in my lifetime, the purchase-money for the same, and all costs and expenses of or incidental to the completion of the said purchase, shall be paid out of my general personal estate (*b*). Devise of freeholds contracted to be purchased. The purchase-money to come out of personal estate.

(*z*) This form is necessary to carry out the intention indicated, where the gift is not to a child or other issue of the testator: see sect. 33 of the Wills Act.

(*a*) Where a testator devises an estate and subsequently contracts to sell it, the devisee is not entitled to the purchase-money, in the absence of express provision to that effect in the will: *Moor* v. *Raisbeck*, 12 Sim. 123; *Farrar* v. *Earl of Winterton*, 5 Beav. 1; *Re Clowes*, [1893] 1 Ch. 214.

(*b*) See *Re Kershaw*, 37 Ch. D. 674.

SPECIFIC DEVISES.

Devise to an illegitimate child so as to prevent escheat (*c*).

10. I DEVISE [*parcels*] to such uses as [*illegitimate child*], of, &c., shall by deed or will appoint; AND, subject thereto, to the use of the said [*child*] in tail; with remainder to the use of my own right heirs.

Devise of land *cum onere* except as to arrears of interest (*d*).

11. I DEVISE all [*parcels*] to the use of my son, [*name*], his heirs and assigns: AND I declare that any arrears of interest which shall be owing on any mortgage charge or incumbrance affecting the same hereditaments and premises at the time of my death shall be paid out of my general personal estate, in exoneration of such hereditaments and premises.

Devise of lands free from mortgage.

12. I DEVISE all [*parcels*] to the use of [*devisee*], his heirs and assigns, free and discharged from all principal moneys and interest charged thereon by an indenture of mortgage dated, &c., and made between [*parties*] [*or*, by any mortgage or mortgages, and from any other charges or incumbrances affecting the same hereditaments, or any part thereof, at the time of my death]; AND I declare that all such principal moneys and interest shall be paid out of my personal estate, in exoneration of the said hereditaments and premises.

Devise of freeholds charged with a legacy. (Short form.)

13. I DEVISE all [*parcels*] to the use of [*devisee*], of, &c., his heirs and assigns, subject to and charged with the payment of the legacy of £—— hereinbefore bequeathed to the said [*legatee*] in exoneration of my personal estate and of all other my real estate.

Devise of freeholds, subject to a charge of an annuity;

14. I DEVISE all [*parcels*] to the use of [*devisee*], of, &c., his heirs and assigns, to the use, nevertheless, that [*legatee*], of, &c., may receive thereout (in exoneration of my personal estate and

(*c*) The Intestates Estates Act, 1884, s. 4, extends the law of escheat to any estate or interest, legal or equitable, in any incorporeal hereditament, and to any equitable estate or interest in any corporeal hereditaments. As to escheat of enfranchised copyholds, see the Copyhold Act, 1894, s. 21 (1) (b).

(*d*) It is not necessary in a devise of mortgaged lands to direct that the devisee shall take *cum onere:* see Locke King's Act (17 & 18 Vict. c. 113). But where any modification of the statutory liability is intended, such intention must be expressed. As to the effect of Locke King's Act, see Robbins & Maw, 4th ed. 372; and Key & Elph. 10th ed. vol. 2, p. 832, note.

all other my real estate) an annuity of £—— during his life to commence from the day of my death, and to be payable to him by half-yearly [*or*, quarterly] payments on the —— day of —— and —— day of —— [*or*, on the usual quarter days], the first payment to be an apportioned payment if for a broken half-year [*or*, quarter] to be made on such of the said days as shall happen next after my death; AND subject to the said annuity and charge, and to the powers and remedies for recovering the same, to the use of the said [*devisee*], his heirs and assigns. PROVIDED that if the said charge should fail by lapse or otherwise, such failure shall be for the benefit of the said [*devisee*], his heirs and assigns.

SPECIFIC DEVISES.

power of distress and entry;

proviso for lapse.

15. I DEVISE all [*parcels*] subject to and charged with the payment of my debts, funeral and testamentary expenses and legacies to the use of [*devisee*], of, &c., his heirs and assigns.

Devise in fee subject to debts, &c. (*short form*).

16. I DEVISE all [*parcels*] to [*trustee*], of, &c., and [*trustee*], of, &c., their heirs and assigns; to the uses, upon the trusts and with and subject to the powers and provisions declared and contained by and in an indenture of settlement, dated, &c., and made between [*parties*] concerning the freehold hereditaments therein and thereby comprised and settled, or such of the same trusts, powers, and provisions as shall at the time of my death be subsisting and capable of taking effect (*e*), but not so as to multiply charges or powers of charging (*f*).

Devise of freeholds to trustees of a settlement.

17. I DEVISE all [*parcels*] to the use of [*devisees*], their heirs and assigns, in equal shares as tenants in common. But, if either of the said [*devisees*] should be dead at my death, or should afterwards die under the age of twenty-one years, without leaving issue living at my death, I devise the share intended for him unto the other of them, his heirs and assigns.

Devise to two as tenants in common in fee, with cross limitations on death under twenty-one, without issue.

18. I DEVISE all [*parcels*] to the use of [*devisees*], their heirs and assigns, in equal shares, as tenants in common. But I give the share or shares (as well accrued as original) of such of them

Devise to several as tenants in common in fee, with cross

(*e*) As to the meaning of these words, see *Re Finch and Chew*, [1903] 2 Ch. 486; and see also, as to the effect of inserting words which may include trusts to be declared in the future, *Re Fane*, [1913] 1 Ch. 404.

(*f*) See *Re Beaumont*, [1913] 1 Ch. 325.

SPECIFIC DEVISES.

limitations on death under twenty-one, without issue.

as shall be dead at my death, or shall die under the age of twenty-one years without leaving issue living at his, her, or their death or deaths, unto the others or other of them, their, his, or her heirs or assigns, for ever, as tenants in common.

Devise to testator's children *nominatim* (*g*).

19. I DEVISE all [*parcels*] to the use of my children, [*names*], their heirs and assigns, in equal shares, as tenants in common.

Devise to children as a class with substitution of issue.

20. I DEVISE all [*parcels*] to the use of all my children [*or*, the children of [*name*]] living at my [*or*, at his] death, and the issue then living of such of them as shall be then dead leaving issue living at my [*or*, at his] death, and their respective heirs and assigns, as tenants in common, in equal shares as between brothers and sisters, but so that the issue of any child so dying shall take between them only the share which their parent would have taken if living.

Devise for life, with remainder to children of devisee as tenants in common in tail.

21. I DEVISE all my freehold hereditaments at ——, unto [*name*], of, &c., during his life, without impeachment of waste; with remainder to his widow, if any, during her life, without impeachment of waste; with remainder to his children, as tenants in common in tail; with cross-remainders, as to shares, both original and accrued, in tail between them; with remainder to the said [*name*], or if he be dead at my death, to such person or persons as shall be his heir or heirs at my death, and his, her, or their heirs and assigns.

Devise to several as tenants in common for life, with cross remainders; remainder to trustees for sale for benefit of surviving issue of devisees for life, *per stirpes;*

22. I DEVISE all [*parcels*] to the use of [*devisees*], during their respective lives, in equal shares, as tenants in common; with cross-remainders as to the share or shares of each of them, whether original or accrued, to the others or other of them, for their respective lives, or his or her life; All such life estates to be without impeachment of waste. AND, after the death of the survivor of them, I DEVISE the same hereditaments to such persons or person as shall then be my trustees or trustee, and their or his heirs and assigns, upon trust that my trustees shall sell the same,

(*g*) Under this devise the share of every child who dies in the lifetime of the testator, leaving issue living at his death, will not lapse, but will take effect as if the child had died immediately after the death of the testator (see sect. 33 of the Wills Act), and, accordingly, will pass to the devisee or heir of such child. As to estate duty, see *Re Scott,* [1901] 1 K. B. 228.

at such time or times, and in such manner as they shall deem expedient, and pay the clear produce thereof to such child or children living at the death of such survivor of any of the said devisees for life, and such issue then living of any previously deceased child or children of any of the said devisees for life as shall attain the age of twenty-one years or marry, if more than one in equal shares *per stirpes;* except that no child of any grandchild shall be included in this gift if such grandchild be then living; AND that the child or children of any deceased child or grandchild shall take only such share as his, her, or their parent or parents would have taken if they, he, or she had lived to take a vested interest in such share; AND if there should be no such issue I direct that the produce of the said hereditaments shall form part of my residuary personal estate; AND until the final distribution of the produce of such sale, I direct my trustees to invest the same in or upon any of the investments hereby authorised, with power to vary investments at their discretion: [*add advancement clause, if required, see* post, *p.* 585].

SPECIFIC DEVISES.

ultimate gift;

investment.

23. I DEVISE [*parcels*] to the use of [*devisee*], of, &c., and [*other devisee*], of, &c., during their joint lives: AND after the death of such one of them as shall first die I devise the whole of the same hereditaments and premises to the other of them for his life: AND after the death of the survivor of them, the said [*devisees*], I declare that the said hereditaments and premises shall sink into and form part of my residuary real estate.

Devise to several for their lives jointly, with remainder over.

24. I DEVISE the freehold messuage, outbuildings, garden, and premises at ——, which I purchased of ——, to the use of my wife, [*name*], during her life; and after the death of my said wife, I devise the said premises to the use of the said [*eldest son*], his heirs and assigns for ever.

Devise to wife for life, then to son in fee.

25. I DEVISE all my copyhold messuage, &c., at ——, in the county of ——, to the use of my son, [*name*], his heirs and assigns, upon trust during the life of my said wife to permit her to enjoy and occupy the same messuage and premises or receive the rents

Devise of copyholds to son in fee subject to trust for wife during her life (*h*).

(*h*) The object of this mode of disposition is, of course, to save the expense of a double admittance. Care should be taken by the *cestui que trust* for life that the devisee, if he be also heir, is admitted in the character of devisee, so that the rolls may carry notice of the will and the trust.

SPECIFIC DEVISES.

and profits thereof: AND from and after the death of my said wife, I devise the said copyhold messuage and premises to the use of my said son, his heirs and assigns, for his and their absolute benefit.

Devise of copyholds, as tenant for life and remainderman shall appoint (*i*).

26. I DEVISE all my copyhold [*parcels*] at ——, in the county of ——, to such person or persons, and for such estate or estates determinable on the death of [*devisee for life*], of, &c., or sooner, as the said [*devisee for life*] shall by deed appoint; AND subject thereto, to the use of the said [*devisee for life*] during his life: With remainder to such uses as [*devisee in remainder* (*k*)] shall by deed or will appoint; AND subject thereto, to the use of the said [*devisee in remainder*], his heirs and assigns.

Devise to wife for life, with condition as to residence, &c. (*l*), with remainder to son in fee;

27. I DEVISE my house at ——, with the garden and appurtenances, unto and to the use of my wife, [*name*], during her life or so long as she shall continue my widow and make the same her principal residence, and shall keep the same in substantial repair and insured against loss or damage by fire; AND so soon as she shall die, or marry again, or cease to reside in such house for more than —— calendar months in any year, or to keep the same in repair or insured as aforesaid, I devise the same house unto and to the use of my son, [*name*], his heirs and assigns: AND, in case my said wife should at any time neglect to keep the said messuage and premises, or any of them, in such repair and condition, and insured as aforesaid, it

(*i*) Under a limitation of copyholds to such uses as the devisee shall appoint, he may transfer the right to admittance by way of mortgage or sale without the expense of a surrender. And if he sells the estate before the lord's right to enforce admittance has accrued, the purchaser may be admitted at once under the will.

(*k*) A person *in esse*. The power would otherwise, unless restricted by apt words, be void for remoteness.

Conditions as to residence.

(*l*) The effect of this devise would seem to be that though breach of the condition as to residence before alienation of the property by way of sale or lease might defeat the widow's life interest if she were to absent herself for more than the prescribed period (*Re Haynes*, 37 Ch. D. 306), yet she might at any time sell or lease the property under the statutory powers of a tenant for life: see sect. 58 (vi.) of the Settled Land Act, 1882. And it has been held that, having regard to the relief against forfeiture contained in sect. 51 of that Act, she would be entitled to a life interest in the purchase-money or rent: *Re Paget's S. E.*, 30 Ch. D. 161; *Re Eastman*, 68 L. J. Ch. 122; *Re Edwards' Settlement*, [1897] 2 Ch. 412; *Re Carne's S. E.*, [1899] 1 Ch. 324; *Re Richardson*, [1904] 2 Ch. 777.

SPECIFIC DEVISES.

shall be lawful for my said son, his heirs or assigns, to supply or repair such neglect, default, or omission, in such manner and to such extent as he or they shall think proper: AND to recover the expenses of so supplying or repairing any such neglect, default, or omission of my said wife and her assigns as aforesaid, together with interest thereon after the rate of 5 per cent. per annum, and all costs incident to the recovery thereof, by entry upon and receipt of the rents and profits of all or any part of the said messuage and premises so devised to my said wife for her life, or by mortgaging or selling the life interest of my said wife therein.

Power for remainderman to repair on default of wife.

28. I DEVISE all that my advowson of the Rectory of – –, to the use of the said [*trustees*], their heirs and assigns, upon trust, that my trustees shall sell the said advowson, subject to such stipulations as to postponement of payment of or security for the purchase-money, or otherwise, as they may think fit; AND I declare that the proceeds of such sale shall form part of my residuary personal estate. PROVIDED ALWAYS, that my trustees may, with the consent of my said wife, during her life, and after her death, at their discretion, postpone such sale for such period as they shall think fit; AND if and so often as a vacancy shall occur in the said living, prior to the sale of the said advowson, may present some fit and duly qualified person thereto; AND I declare that if, upon any such vacancy occurring, any son of mine shall be qualified and willing to accept the said living, and shall, in the opinion of my trustees, be a fit and proper person to hold the same, my trustees shall present him thereto: AND in case more than one son of mine should desire to be presented to the said rectory, the elder of such sons shall be preferred.

Devise of advowson to trustees; in trust to sell;

authority, with wife's consent, to postpone sale of advowson, for the purpose of presenting a son of testator.

29. I DECLARE that all death duties, including increment value duty, succession duty, estate duty, and settlement estate duty (if any) payable on my death in respect of the said —— and hereditaments at —— hereinbefore devised, shall be borne and paid by and out of my residuary estate in exoneration of the said —— and hereditaments.

Provision that death duties shall be payable out of residue (*ll*).

(*ll*) As to increment value duty, see Finance (1909-10) Act, 1910, s. 1; as to succession duty, see Succession Duty Act, 1853, s. 42, and Finance, &c. Act, 1910, s. 56 (1); and as to estate duty, see Finance Act, 1894, s. 9 (1), and Finance Act, 1910, s. 54. See also as to death duties, Finance Act, 1914, ss. 12 to 16.

GIFTS OF RESIDUE.

GIFTS OF RESIDUE.

Personalty to wife.

1. I BEQUEATH all the residue of my personal estate and effects, whatsoever and wheresoever (including [*or*, except] leaseholds for years and other chattels real), after payment thereout of my debts, funeral and testamentary expenses, and of the legacies bequeathed by this my will or any codicil hereto (*m*), unto my wife, [*name*], absolutely.

Personalty to son (*n*).

2. I BEQUEATH all the residue of my personal estate and effects [*or, as in preceding form*] unto my son, [*name*], absolutely.

Personalty to several in equal shares.

3. I BEQUEATH all the residue of my personal estate and effects unto and between [*legatee*], of, &c., and [*legatee*] in equal shares absolutely.

Personalty to surviving children as tenants in common.

4. I BEQUEATH all the residue of my personal estate unto such child and children of mine as shall survive me, and if more than one, in equal shares, to and for his, her, or their own absolute use and benefit (*o*).

Personalty to trustees, or to one or more legatees.

5*a*. I BEQUEATH all the personal estate of or to which I shall be entitled, or over which I shall have a general power of appointment or disposal by will (*oo*) at my death, except property otherwise disposed of by this my will or any codicil hereto, unto the said [*trustees*], upon trust, &c. [*or*, "to [*name*], of, &c., for his absolute benefit"].

(*m*) A gift of residuary real and personal estate with a direction for payment of debts or legacies, charges them on the realty in aid of the personalty: *Re Balls*, [1909] 1 Ch. 791.

(*n*) In case of the death of the son in the testator's lifetime leaving issue, the gift will not lapse, but will become part of the personal estate of the son: see sect. 33 of the Wills Act, 1837.

(*o*) The gift being to children as a class is not within the provision of the 33rd section of the Wills Act as to lapse: *Olney* v. *Bates*, 3 Drew, 319; *Browne* v. *Hammond*, 1 Johns. 210; *Re Sir E. Harvey's Estate*, [1893] 1 Ch. 567. Generally, it is presumed the spirit of that enactment would be agreeable to the wishes of the testator, and for ordinary use the form of bequest to children, including those dying in the testator's lifetime leaving issue (*ante*, p. 509, Form 21), is to be preferred.

(*oo*) See Wills Act, s. 27; *Re Jacob*, [1907] 1 Ch. 445.

GIFTS OF RESIDUE.

Realty and personalty to trustees, or to one or more legatees.

5b. I DEVISE and bequeath all the real and personal estate, whatsoever and wheresoever, of or to which I shall be seised or possessed or entitled at my death, or which I shall then have a general power to dispose of by will, except property otherwise disposed of by this my will or any codicil hereto, unto and to the use of the said [*trustees*], their heirs (*p*), executors, or assigns respectively (*q*), upon trust, &c. [*or*, "unto [*name*], of, &c., his [*or*, her] heirs, executors, administrators, and assigns, for his [*or*, her] absolute use and benefit, subject to payment, &c.," *as in note* (*q*) *below*].

Same, short form.

6. I GIVE and devise all my real and personal property not otherwise disposed of by this my will, or any codicil hereto, to the said [*trustees*], upon trust, &c. [*or*, "to [*name*], of, &c., for his own benefit"].

Residue to children and the issue of deceased children.

7. I devise and bequeath the residue of my real and personal estate, subject to and after payment thereout of my funeral and testamentary expenses and debts and the legacies given by this my will or any codicil hereto, to such child or children of mine living at my death, and such child or children of any my child or children then deceased, as shall survive me and attain the age of twenty-one years, and his, her, or their heirs, executors, administrators, and assigns respectively, in equal shares; But so that the child or children of any deceased child of mine shall take, in equal shares between them, if more than one, only the share which his, her, or their parent would have taken if living: AND I give to my trustees full discretionary power to apportion my said

power to apportion among devisees;

(*p*) It was formerly necessary to mention heirs: *Re Crunden and Meux*, [1909] 1 Ch. 690; but see now Conveyancing Act, 1911, s. 8; and see Wolstenholme's C. A. 10th ed. p. 101.

(*q*) If no other provision is made for payment of debts, &c., say, "subject to payment out of my personal estate [or, in case of deficiency thereof, out of my real estate] of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed hereby, or by any codicil hereto, and the duty on legacies or annuities bequeathed free of duty [and all estate duty and increment value duty payable on my real estate, including chattels real]."

GIFTS OF RESIDUE.

residuary estate among the persons entitled thereto; [and for that purpose, by any deed or deeds to appoint uses of any hereditaments, and, if they or he think fit, to sell or mortgage the same or any part thereof, or to charge any sum or sums on any parts or part thereof, for equality of partition.] [AND I appoint my trustees to be the trustees and trustee for the purposes of management of lands comprised in, and for the receipt and application of income arising from, my residuary real estate during the minorities of any persons beneficially entitled thereto, or interested therein, and for all other purposes of the 42nd section of the Conveyancing Act, 1881.]

appointment of trustees for management, &c., during minorities.

Real and personal estate to trustees, where there are copyholds.

8. I DEVISE all such of my messuages, lands, tenements, and hereditaments as are of copyhold or customary tenure not otherwise disposed of by this my will or any codicil thereto, to such uses, upon such trusts, and with and subject to such powers and provisions as the said [*trustees*] or the [survivors or] survivor of them, or other the trustees or trustee for the time being of this my will (hereinafter called "my trustees") (*r*) shall by deed appoint for the purpose of effectuating a sale or sales of the same hereditaments and premises under the trust in that behalf hereinafter contained: AND I devise all my manors, messuages, lands, tenements, and hereditaments [*or*, all my real estate] of whatever tenure and wherever situate, and not otherwise devised by this my will or any codicil hereto, but, as to the said copyhold and customary hereditaments and premises, subject to any appointment under the power in that behalf hereinbefore contained; AND I bequeath all my personal estate and effects of every description, not otherwise bequeathed by this my will or any codicil hereto, unto and to the use of the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises respectively upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say, upon trust, &c. [*trusts for conversion and investment*, post, *pp.* 555 et seq.].

(*r*) If this interpretation clause has already been inserted in an earlier part of the will, say here merely,
"my trustees."

CONVERSION AND INVESTMENT.

TRUSTS FOR CONVERSION AND INVESTMENT.

Trust for sale and conversion of residuary realty and personalty.

1. Upon trust that the said [*trustees*], or the [survivors or] survivor of them, or other the trustees or trustee for the time being of this my will (hereinafter called "my trustees" (*s*)) shall sell, call in, and convert into money the said real and personal estate and premises, at such time or times and in such manner as they shall think fit, but so that reversionary property shall not be sold until it falls into possession, unless my trustees shall think a prior sale expedient. [And so that my trustees shall have full power to postpone the sale, calling in, and conversion of the whole or any part or parts of the said property, including leaseholds or other property of a terminable, hazardous (*x*), or wasting nature for such period as they may think fit, and to retain investments existing at my death without being liable for loss (*y*).]

Power to postpone sale and conversion (*u*).

Application of income of unconverted property.

2. The income of the unsold portions of the said real and personal estate shall from my death be applied in like manner as if the same were income of the investment hereinafter described of the proceeds of sale thereof; And no reversionary or other property not actually producing income shall be treated as income bearing for the purposes of my will (*z*).

(*s*) If the appointment of executors and trustees contains an interpretation clause (see *ante*, p. 472, Form 3), or if this interpretation clause has been already inserted in an earlier part of the will, say here merely, "upon trust that my trustees."

(*u*) The power to postpone is for a reasonable time only: *Re Marshall*, [1914] 1 Ch. 192; 83 L. J. Ch. 307. The discretion given to the trustees by this power must be exercised consciously (see *Rowlls* v. *Bebb*, [1900] 2 Ch. 107) and by all the trustees: *Re Hilton*, [1909] 2 Ch. 548; see Key & Elph. 10th ed. vol. 2, p. 872, notes.

(*x*) See *Re Bates*, [1907] 1 Ch. 22.

(*y*) If the power to postpone conversion given in Form 9, *post*, p. 558, is used, the words in brackets will be omitted.

(*z*) See *Re Hubbuck*, [1896] 1 Ch. 754; and *Re Lewis*, [1907] 2 Ch. 296. As to the application of the income of unconverted property, as between tenant for life and remaindermen, in the absence of express directions, see notes on *Howe* v. *Lord Dartmouth*, Wh. & T. L. C.; *Re Wareham*, [1912] 2 Ch. 312; *Macdonald* v. *Irvine*, 8 Ch. D. 101; Gover on Capital and Income, 2nd ed. 1377 *et seq.* As to the effect of the provision in the text, see *Rowlls* v. *Bebb*, *sup.*; *Re Chancellor*, 26 Ch. D. 42;

CONVERSION AND INVESTMENT.

Trusts of proceeds of sale, &c. (*a*).

3. My trustees shall out of the net proceeds of such sale, calling in, and conversion, and any moneys in their hands forming part of my said real and personal estate, pay my funeral and testamentary expenses and debts and the pecuniary legacies bequeathed hereby, or by any codicil hereto, and the death duties on such of them as are bequeathed free of such duties.

Power to appropriate part of purchase-moneys for indemnity of purchaser.

4. And I direct that (without prejudice to any statutory or other powers of trustees incident to a sale by them of trust property) my trustees may consent that all or any part of the moneys to arise from any such sale or sales as aforesaid, shall be appropriated and set apart in the names or name either of my trustees or of any other persons or person to be appointed for that purpose, for a given time, or till a given event, to be limited in that behalf, as an indemnity to the purchaser or purchasers of the said hereditaments respectively, and his, her, or their heirs, executors, administrators, or assigns, in such manner and upon such trusts as my trustees shall, in their discretion, think fit.

Power for trustee to purchase any part of trust estate.

5. I declare that my trustees, or any of them, shall be competent to purchase any part of my trust estate, either at any public auction or from a co-trustee or co-trustees by private contract, any rule of equity to the contrary notwithstanding.

Re Crowther, [1895] 2 Ch. 56; *Re Thomas*, [1914] 2 Ch. 110; and see, generally, Key & Elph. 10th ed. vol. 2, p. 873, and the cases there cited.

As to conversion.

(*a*) An absolute trust for sale effects a conversion, notwithstanding a discretion as to the time of sale: *Re Raw*, 26 Ch. D. 601; *Re Heathcote* (1887), W. N. 217; but see, as to a discretionary trust for sale, *Re Hotchkys*, 32 Ch. D. 408.

Duration of trusts for sale.

By sect. 10 (3) of the Conveyancing Act, 1911, a trust for sale, so far as regards the protection of any purchaser thereunder, is to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale. As to the duration of powers of sale, see *Lantsbery* v. *Collier*, 2 K. & J. 709; *Peters* v. *Lewes, &c. Rly. Co.*, 18 Ch. D. 429; *Re Lord Sudeley and Baines*, [1894] 1 Ch. 334; *Re Dyson and Fowke*, [1896] 2 Ch. 720; *Re Jump*, [1903] 1 Ch. 129; *Re Kaye and Hoyle*, 53 Sol. J. 520.

Duration of powers of sale.

If land is directed to be converted, but there is no one who has any right or equity to enforce the trust, there is no conversion, but the land devolves as land: see *Re Lord Grimthorpe*, [1908] 2 Ch. 675; *Re O'Grady's S.*, [1915] 1 Ch. 39. Where there is only a power of sale, no conversion takes place till the power is exercised: *Re Dyson*, [1910] 1 Ch. 750.

As to what are testamentary expenses, see Key & Elph. 10th ed. p. 874, note (*b*).

CONVERSION AND INVESTMENT.

Trust for investment of legacy or share of residue.

6. My TRUSTEES shall invest the legacy [*or*, "share of my residuary estate"] hereinbefore given to or in trust for the said [*legatee*], with his consent [in writing], if of full age, in their names [or under their legal control], in or upon any of the investments hereby authorised.

Trust for investment of infants' legacies or shares of residue.

7. My TRUSTEES shall invest every legacy [*or*, "share of my residuary estate"] which shall not be absolutely vested in possession and immediately payable or transferable [with the consent in writing of any person of full age for the time being entitled to the income thereof, and if there be no such person] at their discretion, in their names, &c. [*as in last form*].

Property to be offered to son or sons before sale, at a valuation:

8. PROVIDED ALWAYS, that no sale shall be made of any part of my freehold, copyhold, customary, or leasehold estates, or of my farming stock, farming utensils, or crops, in the lifetime of any adult son or sons of mine, until my trustees, or one of them, shall, by writing under their or his hands or hand, have offered to such son, or to such sons successively (according to priority of birth), the option of purchasing the same or any part thereof, at a valuation to be made by a valuer appointed by my trustees (such valuation to be made, at the option of my trustees, either before or after the making of such offer to my said son or sons), nor until such son or each of such sons shall have neglected to notify by writing under his hand to my trustees, within fourteen days from the making of such offer, his acceptance thereof; but so that my trustees may, in their discretion, extend the period hereby allowed for notifying any such acceptance if they or he shall think fit: AND I direct that if any such son shall notify his acceptance of the said offer within such period as aforesaid, then, on payment of the amount of the said valuation, my trustees shall assure the said hereditaments and premises to the son purchasing the same or as he shall direct: PROVIDED ALWAYS, that no purchaser from my said trustees shall, nor shall any purchaser from or other person dealing with any such son after the said premises shall have been so assured as aforesaid, be affected or concerned to take notice of the powers of pre-emption hereby given to such son, or to inquire as to whether or not any of the provisions herein contained with regard to such pre-emption have been complied with or duly observed.

protection of purchasers.

CONVERSION AND INVESTMENT.

Power to postpone sale and conversion (*b*).

9. My trustees [shall not sell or convert any reversionary or other property not yielding income unless and until they shall think such sale or conversion would be to the advantage of my residuary estate, and of the persons or person for the time being beneficially entitled thereto or interested therein; And] may, in their absolute and uncontrolled discretion, postpone the sale, calling in, or conversion of my residuary [real and] personal estate, or any part thereof [including leaseholds and other property of a terminable or wasting nature], for such time as they shall think fit, without being answerable for loss; And I declare that, until sale or conversion, the [rents, profits, and] income arising from such part of my residuary [real and] personal estate as shall for the time being remain unsold or unconverted, shall be paid or applied by my trustees, upon the trusts, to the persons or person for the purposes, and in manner, to whom, and for and in which the dividends, interest, and income arising from the investment of the proceeds of sale of my residuary, real, and personal estate would have been payable or applicable under the trusts hereinafter declared concerning the same.

Destination of income till sale or conversion.

Power to executors to continue loan to testator's son;

10. And whereas my son, [*name*], is indebted to me in the sum of £——, for which I hold his bond, dated the —— day of ——, 19—, now, I hereby authorise and empower my trustees, in their discretion, to postpone the calling in of such bond debt or any other debt which may be owing to me from the said [*son*] at the time of my death, for such period as my trustees shall think proper.

Leaseholds, &c. to be considered as sold.

11. As to such portion of my estate the sale or conversion of which shall be postponed under the power in that behalf hereinbefore contained as shall at any time consist of leaseholds, reversions, or other property either of a perishable or increasing value, the person or persons who would have been entitled to the income arising from the proceeds thereof, if sold, shall be entitled only to interest on the actual value thereof as if the same were sold, and not to the annual produce thereof; such value to be estimated by my trustees, in their absolute discretion, with power for them from time to time to vary such estimate; and such interest to be

(*b*) See notes on pp. 555, 556, *ante*.

paid half-yearly, at the rate of 4 per cent. per annum, and to commence and be computed from the day of my death.

Whole of income of leaseholds and property of a wasting nature to be applicable for benefit of tenant for life (*c*).

12. I DECLARE that all rents, profits, or income arising from or receivable in respect of any leaseholds, or other property of a terminable or wasting nature, whether real or personal, and which may for the time being form part of my residuary estate and be vested in possession, shall, for all purposes of this my will and as between all persons interested hereunder, be applicable as from the day of my death as income under the trusts of this my will, no part thereof being in any event liable to be retained as capital.

Trust for investment of residue.

13. MY TRUSTEES shall, [with the consent of my said wife during her life [*or*, widowhood], and afterwards], at their discretion, invest the residue of the moneys to arise from the sale, calling in, and conversion of, or forming part of, my residuary [real and] personal estate in their names, [or under their legal control (*d*)], in or upon any of the stocks, funds, [shares], and securities hereinafter authorised for investment of trust moneys hereunder. AND may from time to time with such consent, or at such discretion as aforesaid, vary and transpose all or any of such investments into or for others of a nature hereby authorised.

Power to vary investments.

Trustees to stand possessed of investments upon trust, &c.

14. I DECLARE that my trustees shall stand possessed of and interested in the said residuary moneys, and the investments of which the same shall consist, or in or upon which the same shall from time to time be invested (hereinafter called the "[residuary (*e*)] trust fund"), and the annual produce and income thereof, upon the trusts, for the purposes, and with and subject to the powers and provisions hereinafter expressed concerning the same, (that is to say), [*ulterior trusts*].

(*c*) See *Howe* v. *Lord Dartmouth*, 7 Ves. 187; Wh. & Tud. L. C. Eq.; and *ante*, p. 555, note (*z*).

(*d*) These words in brackets should be inserted where it is intended to authorise investment in securities passing by delivery, such as many foreign government securities which are incapable of being registered.

(*e*) Where there are several funds settled by the will, it may be convenient to distinguish them as "the first [secondly, &c.] mentioned settled legacy fund," "the residuary trust fund," or otherwise.

CONVERSION AND INVESTMENT.

Power to trustees to invest trust-moneys in the purchase of freeholds, copyholds, or leaseholds (*ee*);

to purchase, subject to special conditions, &c.;

trustees to hold purchased lands upon trusts before declared;

purchased lands to be treated as personalty;

trustee's indemnity and expenses of renewals.

15. My TRUSTEES may, in their absolute discretion, at any time or times invest any moneys in their hands forming part of my residuary real and personal estate, or arising from the sale or disposition thereof, or of any part thereof, in the purchase of any freehold, copyhold or customary or leasehold messuages, lands, tenements, or hereditaments, in England and Wales (so that the leaseholds be held for an absolute term, of which not less than [*sixty*] years shall be then unexpired, or by lease containing a covenant to renew for such term at least), with power to purchase, subject to any special stipulations, and to complete or accept any contract or title, though not strictly enforceable or marketable, and to waive any objections or requisitions; AND my trustees shall hold the messuages, lands, tenements, and hereditaments so to be purchased, upon the like trusts for sale and otherwise, and subject to the like powers and provisions (so far as the circumstances may allow) as if the same had originally formed part of my residuary real or leasehold property, as the case may be; AND so that the messuages, lands, tenements, and hereditaments to be so purchased as aforesaid shall, from and immediately after such purchase or purchases shall be made, be considered for all the purposes of my will as personal estate, and be transmitted accordingly, though no actual conversion thereof into money shall have taken place. PROVIDED that if any messuages, lands, tenements, or hereditaments to be purchased as aforesaid should be held by any lease or leases, my trustees shall be fully indemnified from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases, and if the same premises shall be held by renewable lease or leases for lives or for years, the fines, fees, and expenses of any renewal of the same shall be defrayed out of the rents and income of the property comprised in such renewed lease or leases.

General direction as to consents to sales and investments.

16. I DECLARE that [during the lifetime of my said wife no sale, conversion, investment, or variation of investment of [any part of] my residuary [real or personal estate [in which she shall for the time being be interested] shall be made without her previous consent in writing; AND that after the death of my said

(*ee*) For powers to purchase a residence for wife and daughters, see *post*, p. 595, Form 28.

wife] no sale, conversion, investment, or variation of investment of any part of my said residuary estate, which shall have been appropriated, to answer the whole or any part of the share hereinafter given to my trustees in trust for any of my children and his or her issue, shall be made during the life of the child entitled to the income of such share, if of full age, without his or her previous consent in writing. CONVERSION AND INVESTMENT.

17. My TRUSTEES may, in their discretion, advance and lend to my son, [*name*] for the purposes of his business, any sum or sums not exceeding in the whole £——, out of the said trust funds, at such rate of interest, for such period, and on such personal or other security, as they shall think fit (*f*). Power for trustees to make advances to son out of trust funds.

GENERAL POWERS OF APPOINTMENT OVER PERSONALTY.

1. Upon TRUST for such person or persons, for such purposes, and in such manner, as the said [*donee of power*] shall, at any time or times [during coverture by will or codicil, or while not under any coverture], by any deed or deeds revocable or irrevocable, or by will or codicil appoint: And in default of, and subject to any such appointment, in trust, &c. To one by deed or will, with variation for female donee.

2. Upon TRUST for such persons or person, for such purposes, and in such manner, as the said [*donees of power*] shall, at any time or times, by any deed or deeds, revocable or irrevocable, jointly appoint: And in default of, and subject to any such joint appointment, then as the survivor of them the said [*donees*] shall, after the death of such one of them as shall first die, at any time or times, by any deed or deeds, revocable or irrevocable, or by will or codicil appoint: And in default of, and subject to any appointment made under either of the powers hereinbefore contained, in trust, &c. To two and the survivor.

(*f*) If the son is a trustee, add the following proviso:—

"Provided always that my trustees, other than my said son, [*name*], may call in and compel payment of the said sum or sums of money when the same shall become payable, but without being answerable for any loss arising from any omission so to do or delay in so doing."

TRUSTS OF RESIDUARY PERSONALTY.

TRUSTS OF RESIDUARY FUNDS OF PERSONALTY (*ff*).

Income to wife during her widowhood (*g*).

Request as to maintenance, &c. of children (*h*).

1*a*. Upon trust, that my trustees shall pay the income of the said [residuary] trust fund to my said wife during her life [widowhood]: [And I request my said wife, out of such income, to maintain and educate such of my sons as shall, for the time being, be under the age of twenty-one years, and such of my daughters as shall, for the time being, be under that age, not having been married, in a manner suitable to their station in life; but such request shall not impose any legal obligation on my said wife and she shall not be liable to account for, or in respect of any income so paid to or received by her:] And (*i*) from and after her death, or future marriage, my trustees shall stand possessed of, and interested in the capital and income of the said trust fund,—

After her death or re-marriage.

(*ff*) These forms can easily be adapted to the case of settled legacies, or of real or personal estate where conversion is not directed.

(*g*) Gifts *till marriage* are valid: *Heath* v. *Lewis*, 3 De G. M. & G. 954; see *Evans* v. *Rosser*, 2 H. & M. 190.

Conditions in restraint of marriage.

Conditions *subsequent* in restraint of marriage are generally void, on grounds of public policy, if attached to a gift of personalty (*Morley* v. *Rennoldson*, 2 Hare, 570), or to a gift out of a mixed fund (*Bellairs* v. *Bellairs*, L. R. 18 Eq. 510); but, apparently, not so in the case of a gift of realty: *Jones* v. *Jones*, 1 Q. B. D. 279. But such a condition may be imposed upon a widow (*Lloyd* v. *Lloyd*, 2 Sim. N. S. 263; *Newton* v. *Marsden*, 2 J. & H. 356), or upon a widower: *Allen* v. *Jackson*, 1 Ch. D. 399. As to conditions in restraint of marriage, see Theobald on Wills, 7th ed. pp. 624 *et seq.*; Elph. Introd. 476.

(*h*) As to what words are sufficient to create a precatory trust, see *Re Hamilton*, [1895] 2 Ch. 370; *Re Williams*, [1897] 2 Ch. 12; *Re Oldfield*, [1904] 1 Ch. 549; *Comiskey* v. *Bowring-Hanbury*, [1905] A. C. 84; *Re Burley*, [1910] 1 Ch. 215; and *Re Conolly*, *ibid.* 219; Theobald, pp. 488 *et seq.*

(*i*) The following clause may be here inserted, if desired:—

Substitution of annuity for life interest in case of marriage.

"And if my said wife shall marry again my trustees shall out of the income of the trust fund pay to her during her life, without power of anticipation, an annuity of £——, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after such future marriage, and shall pay and apply the residue of such income as if my said wife were actually dead: And from and after the death of my said wife, shall stand, &c."

TRUSTS OF RESIDUARY PERSONALTY.

1*b*. In trust for all or such one or more exclusively of the others or other of my children [or more remote issue, such issue to be born and take vested interests in the lifetime of my said wife, or within twenty-one years afterwards], at such age or time, or respective ages or times, and, if more than one, in such shares and proportions, and with and subject to such executory trusts, conditions, and limitations over (such trusts, conditions, and limitations over being for the benefit of some or one of my said children, or of the issue of such deceased child or children), and with such powers of advancement, either in the lifetime of my said wife or after her death, maintenance and education, at the discretion of my trustees, or of any other persons or person, and generally in such manner as my said wife [during widowhood] shall, by deed revocable or irrevocable, or by will or codicil appoint: [Provided nevertheless, that, if my said wife shall marry after my death, the power of appointment lastly hereinbefore reserved to her, shall, from and after such her marriage, cease and determine, but without prejudice to any previous appointment by deed made in exercise of such power:] And in default of, and subject to any such appointment,—

Trust for children and remote issue as wife shall appoint (*k*).

Cesser of power on re-marriage.

1*c*. In trust for all or any my children or child, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age, and if more than one in equal shares as tenants in common.

Trust for children equally.

(*k*) Where children take vested interests in a reversionary fund, of which the income is given to their parent for life, it is often expedient to reserve to the latter a power of varying the shares, as well for the purpose of securing to the donee parental influence as of enabling him to adjust the disposition to the exigencies of the respective objects, and introducing such modifications as circumstances may require; and it has another advantage, not often considered, that it checks the children in the disposal of their reversionary interests; for a vested share which is liable to be cut down or wholly defeated by an appointment, of course, is not a marketable commodity.

As to giving to parents a power of selection.

As a precaution against an invalid appointment, it is useful to restrict the issue so as not to fall within the mischief of the rule against perpetuities. But a general power to a person *in esse* to appoint to issue without expressing at what time they are to be born is good, inasmuch as the power may be exercised so as not to infringe the rule: see Elph. Introd. 6th ed. 364; and see *Re De Sommery*, [1912] 2 Ch. 622.

TRUSTS OF RESIDUARY PERSONALTY.

Hotchpot clause.

1*d*. PROVIDED ALWAYS, that no child who [or whose issue] shall take any share, or shares, or interest in the trust fund, by virtue of any appointment or appointments, under the power hereinbefore contained, shall, in the absence of an express declaration to the contrary in any such appointment, take any share in the unappointed part of the said trust fund, without bringing such appointed share or shares, or interest, into hotchpot, and accounting for the same accordingly.

Ultimate trust in default of children.

1*e*. Subject to the trusts aforesaid and to the powers hereby or by law vested in my trustees, and to every or any exercise of such powers, my trustees shall hold the said trust fund and the income thereof IN TRUST for, &c.

Trust for wife for life, without power of anticipation;

2*a*. UPON TRUST, to pay the income of the said trust fund to my said wife during her life, but without power of anticipation; AND from and after her death as to as well the capital as the income of the said trust fund,—

for testator's children and issue as wife shall appoint (short form);

2*b*. IN TRUST for such one or more of my children or more remote issue (such more remote issue to be born in the lifetime of my said wife), in such shares, if more than one, subject to such provisoes and restrictions, and in such manner in all respects as she my said wife shall, by deed or will, or codicil, appoint: AND

in default of appointment;

in default of, and subject to any such appointment,—

for children and issue living at wife's death, *per stirpes*.

2*c*. IN TRUST for all and every the children and child of mine who shall survive me and be living at the death of my said wife, and who shall attain the age of twenty-one years or marry, if more than one, in equal shares; AND also the issue then living, and who shall attain the age of twenty-one years or marry, of any children or child of mine who shall have died in the lifetime of my said wife (whether in my lifetime or after my death), such issue, through all the degrees, to take *per stirpes*, and if more than one, in equal shares, as between themselves, such share or respective shares only as his or their parent or respective parents would have been entitled to if living, absolutely.

Hotchpot clause.

2*d*. PROVIDED ALWAYS, that no child, or other issue (*l*), who or whose issue, &c. [*continue as in Form* 1*d*].

Trust for wife for life, to be applied for main-

3*a*. UPON TRUST, to pay the income of the said trust fund to my said wife during her life, but so that she shall not have power to anticipate the same during coverture; subject nevertheless to

(*l*) These words are necessary where the trusts in default of appointment extend to remoter issue.

the obligation of my said wife, suitably and adequately to maintain and educate all and every my children and child, until they, he, or she shall attain the age of twenty-one years or marry under that age respectively, in such manner as she shall in her discretion think proper; AND from and after the death of my said wife, as to as well the capital as the income of the trust fund,— TRUSTS OF RESIDUARY PERSONALTY. tenance of herself and children; after the death of wife.

3*b*. IN TRUST for all or any my children or child who shall be living at the time of my death, and who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age, if more than one, in equal shares; subject, nevertheless, as to the shares of such of my children as shall be daughters, to the trusts hereinafter declared concerning the same. Trust for children, sons at twenty-one, daughters at twenty-one or marriage;

3*c*. MY TRUSTEES shall stand possessed of and interested in the share of the trust fund to which such daughter or each of such daughters shall become entitled, and the investments (*m*) representing the same (hereinafter called "the settled share"), upon the trusts following, namely:— settlement of the shares of daughters; investment;

3*d*. UPON TRUST, to pay the income of the settled share to such daughter during her life, but without power of anticipation, while under any coverture; AND from and after the death of such daughter, shall stand possessed of and interested in the capital and the future income of the settled share,— inalienable life interest;

3*e*. IN TRUST for all or such one or more of the children or remoter issue of such daughter (such remoter issue being born in her lifetime or within twenty-one years after her death), in such proportions, for such interests, and generally in such manner as she shall by deed, revocable or irrevocable, or will or codicil, appoint: AND in default of, and subject to any such appointment, children and other issue of daughter, as she shall appoint;

3*f*. IN TRUST for all and every the children and child of such daughter, who, either before or after her death, shall, being sons or a son, attain the age of twenty-one years, or, being daughters or a daughter, attain that age or marry, if more than one, in equal shares [*Hotchpot clause*, ante, *p.* 564, *Form* 1*d*, *substituting* "settled share" *for* "trust fund"]; but if no child of such daughter of mine shall live to acquire a vested interest in such daughter's share, then,— in default to children equally:

(*m*) It is assumed that the will contains a general direction as to investments.

TRUSTS OF RESIDUARY PERSONALTY.

as daughter shall appoint;

3*g*. In trust for such persons, for such interests, and generally in such manner in all respects as such daughter shall, while not under any coverture, by deed revocable or irrevocable, or, whether covert or sole, by will appoint; And in default of, and subject to any such appointment, in trust for the person or persons who, at the death of such daughter, under the statutes for the distribution of intestates' effects, would be entitled to her personal estate if she had died a spinster and intestate, such persons, if more than one, to take in the proportions prescribed by the same statutes.

daughter empowered to appoint a life interest to a husband.

3*h*. And I empower such daughter, notwithstanding the trusts herein contained by deed, executed either after or in contemplation of her marriage, or by will or codicil, to appoint the whole or any part [*or*, any part not exceeding one moiety] of the annual income, to accrue due after her death, of the settled share, unto or for the benefit of any husband of such daughter who shall survive her, during the remainder of his life or for any less period, and subject to such provisions and restrictions as she shall think fit.

Income of one moiety to wife during widowhood.

4*a*. Upon trust, as to one moiety of the said trust fund, to pay the income thereof unto my said wife, or permit her to receive the same during her widowhood (*n*).

Trust for children, sons at twenty-five, daughters at twenty-one or marriage, sons' shares being double those of daughters.

4*b*. And as to as well the said moiety of the said trust fund (subject as aforesaid), as also the other moiety thereof, immediately after my death, in trust to pay or divide the same to or among all and every my children and child who shall survive me, and, being sons or a son, shall attain the age of twenty-five years, or, being daughters or a daughter, shall attain the age of twenty-one years or marry under that age, with my consent if marrying in my lifetime, or with the consent of her or their guardians for the time being (if any) if marrying after my decease, for the absolute benefit of such children respectively, in such shares and proportions that the share of each son of mine shall be double the

As to provisions for widow.

(*n*) This form, and two others which have preceded it, exhibit much variety in the mode of providing for the testator's widow. In Form 1, the widow takes the entire income for her own use during her widowhood; in Form 3, she takes the income for life, charged with the maintenance of the testator's children; and in the present instance, the widow takes an immediate life interest in a moiety during widowhood, the other moiety being given to the children, on failure of whom before the vesting age the widow also takes an interest for life (not during widowhood merely) in this moiety.

share of each daughter of mine; AND as to daughters' shares, subject to the trusts hereinafter declared of the same.

TRUSTS OF RESIDUARY PERSONALTY.

4*c*. MY TRUSTEES shall stand possessed of and interested in the said trust fund, or the share thereof to which any daughter of mine shall become entitled as aforesaid (subject, nevertheless, to the trust concerning the income of one moiety of the trust fund in favour of my said wife during her widowhood as aforesaid), upon the trusts hereinafter expressed (that is to say), whether such daughter shall marry before attaining the age of twenty-one years, or shall attain such age without having married, upon trust to continue the investments for the time being thereof, or from time to time to vary such investments in, to, or for others of a nature hereby authorised as shall be deemed expedient; AND shall hold the said trust fund, or the share therein of such daughter, and the investments representing the same (hereinafter called "the settled fund"), and the income thereof, upon the trusts following (that is to say),—

Settlement of shares of daughters.

4*d*. UPON TRUST, to pay the income of the settled fund to such daughter during her life; AND from and after her death shall hold the capital and future income of the settled fund.

Trusts for each daughter during her life.

4*e*. IN TRUST (*o*), for all and every the children or child of such daughter absolutely, if more than one, in equal shares; AND if any one or more of the said children, being a son or sons, should die under the age of twenty-one years, or, being a daughter or daughters, should die under that age without having been married, then as to as well the original share or shares of the settled fund, belonging to the child or children respectively who shall so die as aforesaid, as also the share or shares thereof to which the same child or children respectively may become entitled under this present trust, in trust for the other or others of the said children absolutely, if more than one, in equal shares, or if there should be originally only one child of such daughter as aforesaid (*p*), then in trust for such only child, absolutely.

Trust for her children equally.

Accruer clause.

(*o*) Here, it will be observed, the daughters have no power of selection (as in Form 3*g*). Such a power has a salutary tendency in increasing parental influence, and enabling the donee to adapt her disposition of the property to the circumstances existing at the time of its exercise.

(*p*) This form exemplifies what does not occur in any previous one, namely, a gift to the children as they come into existence of immediate vested interests, with a clause of accruer causing their interests to be

As to limitations of personalty, with clauses of accruer.

TRUSTS OF RESIDUARY PERSONALTY.

In default of children of daughter, then upon the trusts declared of the remaining shares.

4*f*. IF THERE should be no child of such daughter of mine, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, as to the part of the fund, constituting the share or shares, as well original as accruing under this present proviso, of such daughter as aforesaid, my trustees shall stand possessed thereof, upon the trusts and for the purposes by this my will declared concerning the other or remaining shares of the trust fund, for the benefit of my other children respectively, or such their issue as aforesaid, so far as the same trusts and purposes shall then be subsisting and capable of taking effect. AND in case none of the trusts declared by this my will concerning the other or remaining shares in favour of my other children or their issue should be then subsisting, or in case such trusts should afterwards fail, then the share or shares of such my daughter respectively who shall die without leaving any child who shall acquire an absolutely vested interest as aforesaid, shall be subject to the trusts of this my will, which are subsequent to the trusts herein declared in favour of my child and children, and the issue of any deceased child or children as aforesaid (*q*).

Power to daughters to bequeath life interests to surviving husbands.

4*g*. NOTWITHSTANDING THE trusts hereinbefore contained concerning the shares of my said daughters respectively, it shall be lawful for any such daughter of mine as aforesaid, in case she should have no child who shall acquire an absolutely vested interest in the share of such daughter in the said trust fund, under the trusts hereinbefore contained, by will or codicil, to appoint unto or in trust for the husband of such daughter, who may happen to survive her, for his own use and benefit, the income arising from the share of such daughter in the said trust fund, for any term or period not exceeding the life of such husband (*r*).

Clause substituting the issue of children dying

4*h*. IF ANY of my children should die before me, or before he, she, or they shall have acquired a vested interest or vested interests

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divested on their dying before the age of distribution; the more usual and better course is to suspend the vesting until the latter period.

(*q*) A power of advancement as to the shares of daughters may be here inserted, if desired. For a form of such a power, see *post*, p. 586, Form 10.

(*r*) There would, in general, be but little hesitation to give daughters a power of this nature on failure of children; in which respect the present power differs from the one in the Form 3*h*, where it is made to take precedence of the trust in favour of the children.

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in the said trust fund under the trusts aforesaid, then such child or children of each or any child of mine so dying as shall attain the age of twenty-one years, or marry under that age, shall take the share or shares, original or accruing, in the said trust fund which his, her, or their parent would have taken under the trusts aforesaid, if he, she, or they had survived me and, being a son or sons, had attained the age of twenty-one years, or, being a daughter or daughters, had attained that age or been married with such consent as aforesaid, and if more than one, in equal shares.

before the vesting age;

4*i*. In case no child or grandchild of mine shall acquire a vested interest in the said trust fund, under the trusts aforesaid, then subject to the trusts, powers, and provisions hereinbefore contained, and to any statutory provisions which may be applicable, my trustees shall pay the income as well of the moiety of the said trust fund, the income whereof is hereinbefore bequeathed in trust for my said wife during her widowhood, as also of the other moiety of the said trust fund, to my said wife, during her life; And after her death shall stand possessed of the entirety of the said trust fund, and the income thereof, upon such and the like trusts, and to and for such and the like intents and purposes, and with, under, and subject to such and the like powers, provisoes, and declarations, for the benefit of my niece, [*name*], and her children, or her surviving husband (being an appointee), as are hereinbefore expressed and declared concerning the share of each of my daughters in the said trust fund; And if my said niece should die without leaving any child who shall acquire a vested interest under the trust lastly hereinbefore contained, then as to the whole of the trust fund, after the death of my said niece, and after the determination of the interest of any surviving husband of her my said niece (being an appointee), in trust, &c. (*s*).

on failure of preceding trusts;

remaining moiety upon trust, for wife for life and, subject thereto, upon trusts for testator's niece and her children, by reference to trusts for testator's daughters.

5*a*. Upon trust, to pay the income of the trust fund to my son, [*name*], during his life, subject to the proviso hereinafter contained: Provided always, that if the said [*son*] should at the time of my death have alienated, charged, or disposed of, or if

Trust for son for life.

Proviso for cesser of life

(*s*) As the shares of sons do not vest before they attain the age of twenty-five years, sect. 43 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), does not apply, and, accordingly, an express power of maintenance should be added in this place, followed by an advancement clause, if desired. For forms of maintenance and advancement clauses, see *post*, pp. 583, Form 2, and 585, Form 7.

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interest on alienation (*t*).

he shall, at any time thereafter, alienate, charge, or dispose, or attempt to alienate, charge, or dispose of the said income, or any part thereof, or if, by reason of his bankruptcy or other event happening either before or after my death (*u*), the said income shall, or, but for this present proviso, would become wholly or in part vested in or charged in favour of some other person or persons, then the trust hereinbefore expressed concerning the said income shall immediately thereupon cease or determine, and my trustees

Discretionary trusts of income after alienation.

shall, during the residue of the life of the said [*son*], or during such shorter period, continuous or discontinuous, as they shall in their absolute discretion think fit, pay and apply the said income, or any part thereof, to and for the personal support and maintenance, or otherwise, for the benefit of the said [*son* (*x*)] or the wife, child, or children, or remoter issue, for the time being, if any, whether infants or of full age, of the said [*son*], or such one or more, exclusively of the others or other of such persons, and in such manner as my trustees, in their absolute discretion, shall think fit.

Trust to accumulate unapplied income for 21 years.

[5*b*. AND SUBJECT to the discretionary trust lastly hereinbefore contained, upon trust, for the period of twenty-one years after my death, to accumulate and invest the income of the trust fund, or so much thereof as shall from time to time not be paid or applied as aforesaid by my trustees in augmentation of the principal or capital of the trust fund, in the nature of compound interest:

On failure of trust,—

AND from and after the failure or determination of the trust of income hereinbefore contained in favour of the said [*son*], during his life, and after the expiration of twenty-one years after my death my trustees shall hold the capital of the trust fund, and the accumulations (if any) thereof, but subject to the discretionary trust aforesaid,—]

Income to be applied as if

5*c*. UPON TRUST to pay and apply the income thereof, or so

(*t*) For other forms of trusts for life determinable on bankruptcy, &c., see *ante*, Form 6, p. 528, and *post*, Form 6, p. 571. The Apportionment Act, 1870, does not apply to income accrued but not actually payable under this clause at the time of cesser of the life interest: see *Re Jenkins*, [1915] 1 Ch. 46.

(*u*) If there is a power of advancement with the consent of the tenant for life, say,

"not being merely a consent to the exercise of any power of advancement herein contained."

(*x*) See *ante*, p. 536, note (*l*).

much as shall not from time to time be applied under the same discretionary trust to the person or persons, and in like manner as the same would be payable or applicable under the ulterior trusts concerning the same hereinafter contained, if the said [*son*] were then actually dead,—

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son were dead.

5*d*. And from and after the death of the said [*son*], my trustees shall hold the trust fund [and the accumulations, if any, thereof], and the future income of the same, upon trust to pay the income of the trust fund unto the present or any future wife of the said [*son*], who may happen to survive him, during the life of such wife, without power of anticipation; And, after her death, upon trust to transfer the capital of the said trust fund unto or among such child or children of the said [*son*], whether born before or after the determination of his said life interest, as shall attain the age of twenty-one years or die under that age leaving issue, for his, her, or their absolute use and benefit, and if more than one, in equal shares.

Trusts, on death of son, for his wife and children.

5*e*. And, in case the said [*son*] should have no child who shall acquire a vested interest in the trust fund under the trusts aforesaid, then I direct that my trustees shall stand possessed thereof, and of the income thereof, after the death of the said [*son*] and of any wife who may happen to survive him as aforesaid, upon trust for my son, [*other son*], for his absolute use and benefit, and, if he shall die in my lifetime whether leaving issue or not, upon trust for his executors or administrators, as part of his personal estate [*or*, upon the trusts and purposes, and with, under, and subject to the powers, authorities, provisoes, and declarations herein expressed and contained of and concerning the —— part or share of my said residuary estate and the proceeds thereof herein limited in trust for my said son, [*other son*], or his children or issue].

Trust, in default of children of A., for B. absolutely, [*or*, trusts by reference].

6*a*. Upon trust, to pay the income of the trust fund to my son, [*name*], unless and until he shall have done, committed, or suffered, or shall at any time or times after my death do, commit, or suffer any act, default, or thing (*xx*), which would have the effect of vesting the right to receive such income, if absolutely belonging to my said son, in any other person or persons whomsoever.

Trust for son for life determinable on alienation, &c. (short form).

6*b*. And in the event of the failure or determination during the life of my said son of the trust of income hereinbefore ex-

Discretionary trust of income after alienation.

(*xx*) See note (*u*), p. 570.

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pressed in his favour, my trustees may, in their absolute discretion, pay or apply the income of the trust fund, or any part thereof, to or for the personal support and maintenance or otherwise for the benefit of my said son, or his wife, or children, or remoter issue (if any) for the time being, and the persons or person interested in the trust fund under the ulterior trusts hereinafter contained, or such one or more exclusively of the others or other of such persons and in such manner as my trustees shall, in their absolute discretion, think fit: AND subject to such discretionary power, my trustees shall hold the income of the trust fund during the residue of the life of my said son upon the trusts upon which the same would for the time being be held if my said son were then actually dead: AND from and after the death of my said son, &c. [*ulterior trusts as in Form 5d*, supra].

Life interest absolutely determinable on alienation.

7. UPON TRUST, &c. [*ut ante, Form 6a*]: AND from and after the failure or determination during the life of my said son of the trust of income hereinbefore expressed in his favour, my trustees shall hold the trust fund and the future income thereof upon the trusts and for the purposes upon and for which the same would be applicable respectively under this my will if my said son were then actually dead: AND from and after the death of my said son, &c. [*ulterior trusts*].

Trusts for several legatees successively for their lives.

8. UPON TRUST, to pay the income of the trust fund to [*legatee*], of, &c., during his life: AND from and after his death to pay such income to [*second legatee*], of, &c., during her life, without power of anticipation during coverture: AND from and after her death, my trustees shall hold the capital and future income of the trust funds upon the trusts following, that is to say, upon trust, &c. [*or*, in trust for [*third legatee*], of, &c., absolutely].

General proviso in restraint of anticipation.

9. NO FEMALE taking an interest for life [or absolute, and whether in possession, reversion, remainder, or expectancy] under the foregoing trusts shall have power to anticipate the same during any coverture (*y*).

(*y*) As to restraints on anticipation, see *ante*, p. 510, note (*b*). The restraint cannot be made to attach to the interest of a female born after the testator's death.

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General proviso for cesser of life interests on alienation.

10. IF ANY beneficiary in whose favour any trust of income during his or her life is hereinbefore declared shall, at any time or times, alienate or charge, or affect to alienate or charge, such income, or any part thereof, or if by reason of his or her bankruptcy or any other event happening either before or after such life interest shall come into possession, or before or after my death, such income shall, or, but for this proviso, would, wholly or in part, be or become vested in or charged in favour of some other person or persons, then the trust of income hereinbefore declared in favour of such beneficiary shall thereupon cease or determine: AND from and after the failure or determination of such trust of income, my trustees shall, during the residue of the life of such beneficiary, pay or apply such income to or for the benefit of the person or persons who would be entitled thereto under the ulterior trusts, if such beneficiary were dead [*or*, to or for the benefit of the wife or husband and children of such beneficiary during the remainder of his or her life, in such proportions, at such times, and in such manner as my trustees shall in their absolute discretion think fit].

General proviso for forfeiture of reversionary interests on alienation (*z*).

11. IF ANY person who shall at my death be, or at any time thereafter shall become, entitled to any reversionary interest in the said trust fund, shall at any time before the vesting in possession of such interest, and whether before or after my death have alienated or charged such interest, or any part thereof (otherwise than by way of settlement made in contemplation of, or, with the consent of my trustees after the marriage of any person so entitled as aforesaid), or if by reason of his or her bankruptcy or any other event happening such interest, or some part thereof, should, or, but for this proviso, would on falling into possession become vested in some other person or persons, then the trusts hereinbefore declared in favour of such beneficiary shall thereupon cease, and from and after the failure or determination of such trusts, and of the trusts preceding such reversionary interest as aforesaid, my trustees shall pay or apply the capital and income of the trust fund, the trust whereof shall have so failed or determined, to or for the benefit of the person or persons who would

(*z*) An executory gift over of real or personal property on alienation of an absolute *possessory* interest is void: see *Re Dugdale*, 38 Ch. D. 176, and the cases there cited.

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be entitled thereto under the trusts herein declared if the person so forfeiting his or her interest had died in my lifetime [without leaving issue].

Trust to pay income of fund to three persons and the survivors and survivor.

12*a*. UPON TRUST to pay the income of the trust fund [*or*, the said sum of £——] among and between [A.], [B.], and [C.], and the survivors of them, in equal shares, during their joint lives and unto the survivor of them during his life.

General testamentary power of appointment as to capital of each third part.

12*b*. AND from and after the death of such survivor: Upon trust to hold the capital and income of the said trust fund, as to one equal third part thereof, for such person or persons as the said [A.] shall by will or codicil appoint; AND as to one other equal third part thereof, for such person or persons as the said [B.] shall in like manner appoint; AND as to the remaining one equal third part thereof, for such person or persons as the said [C.] shall in like manner appoint; such respective parts to be paid in such shares and at such times and subject to such powers, provisoes, conditions, and restrictions, and generally for such purposes and in such manner as the said [A.], [B.], and [C.] shall respectively, by will or codicil, appoint: AND in default of and subject to any such appointment,

Trust for survivor.

12*c*. UPON TRUST for the ultimate survivor of them, the said [A.], [B.], and [C.], absolutely.

Trust for testator's younger children at twenty-one or marriage (excluding child taking devised estates).

13. MY TRUSTEES shall stand possessed of and interested in the trust fund and the dividends, interest, and annual produce thereof, in trust for and to be equally divided between or among all or any my children or child other than my eldest or only son or daughter for the time being entitled as tenant for life to the freehold estates hereby devised who, being a son or sons, shall have attained or shall attain the age of twenty-one, or, being a daughter or daughters, shall have attained or shall attain that age, or shall have married or shall marry under that age, with the consent, if marrying after my death, of their or her guardian or guardians for the time being, and if more than one, in equal shares; AND if there shall be no child of mine other than as aforesaid, who being a son attains the age of twenty-one years, or being a daughter attains that age or marries under that age, with such consent as aforesaid, then the trust fund shall be in trust for my eldest or only son or daughter so for the time being

entitled as aforesaid, and shall be a vested interest in such son on his attaining the age of twenty-one years, or in such daughter attaining that age or marrying under that age with such consent as aforesaid.

Trust for the children of testator or another person attaining twenty-one or marriage, and the children of deceased children (*a*).

14. In trust for such child or children of mine [*or*, of [*name*]] living at my death [*or*, at the death of the said [*name*]], and such child or children of any child or children of mine [*or*, of the said [*name*]], dying before me [*or*, before the said [*name*]], as being a male or males, shall attain the age of twenty-one years, or being a female or females shall attain that age or marry under that age, if more than one, in equal shares; but so that the child or children of a deceased child of mine [*or*, of the said [*name*]] shall take in equal shares, if more than one, only the share which such deceased child would have taken if he or she had survived me [*or*, the said [*name*]] and acquired a vested interest.

Trust for children, unequal shares (*b*).

15. Upon trust that my trustees shall out of the trust fund pay to my daughter [A.] the sum of £——, and to my daughter [B.] the sum of £——, and shall pay or transfer to my son [C.] the ultimate residue of the trust fund, after raising thereout and paying the said sums of £—— and £—— respectively, as aforesaid: Provided always, that my trustees may, at their discretion, in lieu of raising and paying the said sums of £—— and £—— as aforesaid, appropriate and transfer to the said [A.] and [B.], or either of them, stocks, funds, [shares], or securities forming

Power for trustees to allot investments of shares instead of paying them in cash (*c*).

(*a*) This clause may easily be adapted to the case of a trust for children, &c. living at the death of the testator and his wife; or particular children may be named, which would have the effect of excluding not only living children not named, but also children born after the date of the will. See also the forms of pecuniary bequests, pp. 503 *et seq.*, which are also applicable, with slight alteration, to gifts of residuary personalty.

(*b*) The effect of this clause is that if the residue should be insufficient to pay in full the sums given to the daughters, such gifts will abate as between themselves, without affecting the payment in full of any pecuniary legacies given in the earlier part of the will, and the son will take nothing under the gift of residue.

(*c*) As to the power of trustees and executors to appropriate personal estate to satisfy legacies or shares of residue, see *Re Beverly*, [1901] 1 Ch. 681, and the cases there mentioned; see also *Re Salaman*, [1907] 2 Ch. 46; *Re Craven*, [1914] 1 Ch. 358. Sub-sect. 1 of sect. 4 of the Land Transfer Act, 1897, extends the trustees' powers of appropriation to real

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part of the investments for the time being of the trust fund of a value equal at the time of appropriation to the sums or sum hereinbefore directed to be raised and paid to them or her, but so that the appropriation of such stocks, funds, [shares], or securities, and the mode or means in or by which their value shall be ascertained, shall not be disputed or questioned by the said [A.] or [B.], or either of them.

Trust for children unequally. Another form (*d*).

16. UPON TRUST to pay or transfer one equal third part or share of the trust fund to my daughter [A.], and one other equal third part or share thereof to my daughter [B.], and the remaining equal third part or share thereof to my son [C.]: PROVIDED ALWAYS, that if the amount or value of the trust fund shall at the period of distribution exceed the sum of £——, then each of my said daughters shall be entitled to and receive the sum of £——, being one equal third part or share of such sum of £——, and the residue of the said trust fund, after raising and paying thereout the sum of £—— to each of my said daughters, shall be paid or transferred to my said son for his absolute use and benefit.

Trust for children at twenty-five; substitution of the children of any child dying under twenty-five.

17. UPON TRUST to pay, transfer, or divide the trust fund, unto, between, or among such child or children of mine as shall survive me and attain the age of twenty-five years, and the child or children living at my death of any child or children of mine who shall be dead at my death (*e*) or shall die under the age of twenty-five years, and if more than one, in equal shares as between brothers and sisters, but so that the child or children of any child of mine dead at my death, or dying under the age of twenty-five years, shall take equally between them, if more than

as well as personal estate; but as, under this sub-section, the appropriated property must be valued in accordance with "the prescribed provisions" and no rules have been made under this section, it is inoperative. As to the jurisdiction of the Court to sanction a scheme of appropriation, see *Re Cooke*, [1913] 2 Ch. 661.

(*d*) The effect of this clause is that if the residue does not exceed the amount specified, the daughters and son will take in equal shares, otherwise the surplus will go to the son.

(*e*) See *Viner* v. *Francis*, 2 Br. C. C. 658; *Lee* v. *Pain*, 4 Hare, 250; *Dimond* v. *Bostock*, L. R. 10 Ch. 358.

one, only such share as his, her, or their parent would have taken if living and attaining a vested interest.

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18. If any grandson or grandsons of mine attain the age of twenty-one years before the expiration of twenty-one years computed from the time of the death of the survivor of my children and more remote issue (if any) living at my death, then the vesting of the share of each such grandson in the trust fund shall be postponed to the expiration of such term of twenty-one years, or until the attainment by such respective grandson of the age of twenty-five years, which shall first happen.

Proviso postponing vesting of grandsons' shares to the age of twenty-five, if not too remote.

19. If any child of mine [*or*, of the said [*name*]] shall have died in my lifetime, [*or*, in the lifetime of the said [*name*]] leaving issue who shall survive me [and the said [*name*]], such issue being male and attaining the age of twenty-one years, or being female and attaining that age or marrying, shall take by substitution, if more than one, in equal shares as tenants in common the share in the trust fund which such deceased child of mine [of the said [*name*]] would have taken had he or she survived me and attained a vested interest.

Clause substituting the issue of legatees in the event of their dying in the testator's lifetime.

20. If no child or remoter issue of mine shall live to acquire a vested interest in my said residuary personal estate and effects, then the whole of my said residuary personal estate and effects, or so much thereof as shall not have been applied under any of the powers herein contained, shall be in trust for my said wife, absolutely, if living and unmarried at the time of the default or failure of such children or issue, or the time of my death, which shall last happen; but if she shall be then dead or married, then in trust for my sister, [*name*], of, &c., absolutely.

Trust in default of children living to acquire a vested interest, for testator's wife if living and unmarried, and if not, then in trust for testator's sister.

21. In trust for all or any of my brothers and sisters living at my death and the children or child then living of any such brother or sister of mine as shall be then dead, who being males or a male shall attain the age of twenty-one years, or being females or a female shall attain that age or marry under that age, in equal shares as tenants in common, but so that the child or children of any deceased brother or sister shall take, if more than one, equally between them only the share which their, his, or her parent

Trust for brothers and sisters of testator living at his death and children of deceased brothers and sisters.

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would have taken if he or she had survived me and acquired a vested interest under the trust lastly hereinbefore contained.

Trust for surviving brothers and sisters issue of deceased brothers and sisters for life, *per stirpes;* and then to their children or other issue at twenty-one, &c., under appointment.

22*a*. UPON TRUST to pay the income of the trust fund unto, between, or among such of my brothers and sisters as shall survive me, and the issue living at my death of any of my brothers and sisters who shall then be dead (other than the issue of a child or grandchild then living), during their respective lives, in equal shares as between or among children of the same parent; AND so that the issue of any deceased brother or sister, or of any deceased brother's or sister's child or grandchild, shall collectively take only the share which such deceased brother or sister or brother's or sister's child or grandchild, would have taken if living; AND after the death of each such brother or sister or brother's or sister's issue, as to the share whereof the income is so given to him or her for life, upon such trusts for the benefit of any one or more of his or her issue (born in his or her lifetime), as he or she shall by deed or will appoint; AND, subject thereto, in trust for such his or her children or child as being males or a male shall attain the age of twenty-one years or leave issue, or, being females or a female, shall attain that age or marry, and if more than one, in equal shares.

Cross limitations between or among the several families.

22*b*. AND, on failure of the trusts aforesaid as to such share, upon the trusts herein declared concerning the other shares or share (including this present limitation); AND on failure of all the trusts aforesaid as to all the shares, then as to each share, upon trust for the person to whom the income thereof is hereinbefore made payable, his or her executors, administrators, and assigns, absolutely.

Hotchpot clause.

22*c*. PROVIDED ALWAYS, that no child or other issue of any of my said brothers and sisters, who or whose issue, &c. [*continue as on page* 564, *Form* 1*d*].

Trust for brothers and sisters for their respective lives;

23*a*. UPON TRUST to pay to all and every my brothers and sisters, during his or her life, the income arising from the share of the trust fund hereinafter limited in trust for his or her child or children, so that each brother or sister of mine shall from time to time be entitled to the income from such share of the said trust fund as his or her child or children shall, or in the case of an unmarried or childless brother or sister would, if he or she had

any child or children, be presumptively entitled to for the time being under the trusts and limitations hereinafter contained; AND as to each sister of mine, without power of anticipation; AND, subject to the life interests of my said [wife and] brothers and sisters respectively in the income from the whole or any share or shares of the said trust fund.

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and subject thereto.

23*b*. UPON TRUST to pay, transfer, or divide the said trust fund to or among such children or child of my brothers and sisters (including brothers and sisters already dead, or who shall be dead at my death), and such children or child of any nephew or niece of mine dying before me as, being males or a male, shall attain the age of twenty-one years or leave issue, or, being females or a female, shall attain that age or marry, in equal shares as between or among the children of the same parent, and also in equal shares as between or among the different families, so that the child or the children or issue collectively of one brother or sister of mine shall take an equal share with the child or the children or issue collectively of any other brother or sister, and so that the child or the children collectively of a deceased child shall take only the share which such deceased child would have taken if living.

Trust for children of brothers and sisters attaining twenty-one years, &c.

24*a*. UPON TRUST, as to one equal moiety of the trust fund, that my trustees shall from time to time pay or apply all or any part or parts of the capital thereof and income therefrom, unto such person or persons, in such manner, upon such trusts, for the benefit of my brother, [*name*], and subject to such (if any) personal superintendence on the part of my trustees, as they shall think fit; AND, after the death of my said brother, shall dispose of the residue (if any) of such moiety of the trust fund in such manner as if the same were part of my said brother's personal estate, and he had died intestate (*f*).

Trust as to a moiety of residue to apply income or capital for benefit of lunatic brother;

after his death to divide any surplus among his next of kin.

24*b*. AND UPON TRUST, as to the other one equal moiety of the trust fund, that my trustees shall pay the income thereof, or permit the same to be received by my sister, [*name*], during her life, but without power of anticipation, during any coverture; AND from and after the death of my said sister:

Trust as to other moiety for sister for life;

24*c*. UPON TRUST to pay the said income to the surviving husband (if any) of my said sister during his life; AND, after

then for sister's husband for life;

(*f*) The concluding words of this clause will exclude any question as to the legatee's capacity, in case it should be alleged that he had left a will.

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the death of my said sister, and of her surviving husband (if any), then as to the same moiety of the said trust fund, and the income thereof,

then for issue of sister, as she shall appoint;

24*d*. IN TRUST for such child or children or other issue of my said sister, born during her lifetime, at such age or time, or respective ages or times, and if more than one, in such shares and proportions, and with such future or executory or other trusts for the benefit of the said issue, or some or one of them, and with such provisions for their respective maintenance, education, or advancement, at the discretion of my trustees, or of any other person or persons, and upon such conditions, with such restrictions, and in such manner as my said sister shall by deed or will appoint. AND in default of such appointment, and so far as any such appointment shall not extend:

for children of sister surviving her at twenty-one, and surviving children of deceased children;

24*e*. IN TRUST for all or any the children or child living at the death of my said sister, and the child or children then living of any then deceased child of hers who, whether children or grandchildren, being male attain the age of twenty-one years, or, being female, attain that age or marry, if more than one, in equal shares, but so that the children of any deceased child of my said sister shall take equally between them only the share which their parent would have taken had he or she survived my said sister and attained a vested interest [*Hotchpot clause*, ut ante, *p.* 564, *Form* 1*d*, mutatis mutandis].

and on failure of all the foregoing trusts, as sister shall appoint; and in default of appointment, for her absolutely;

24*f*. AND, in the event of the failure or determination of all the trusts hereinbefore contained with respect to the last-mentioned moiety of the said trust fund, and subject to the foregoing trusts, powers, and provisions, and to any statutory provisions, and to every or any exercise of such powers or provisions my trustees shall hold such moiety, and the income thereof, upon such trusts and for such purposes as my said sister shall at any time or times, while not under coverture, by deed revocable or irrevocable, or by will or codicil, or while under any coverture by will or codicil appoint; AND in default of, and subject to any such appointment, in trust for my said sister absolutely.

Trust of one share for brother for life and then for his children,

25*a*. IN TRUST, as to one ——th part thereof for my brother, [*name*], during his life; AND, after his death, in trust for such child or children of my said brother, [*name*], as shall attain the age of twenty-one years or leave issue, or, being a daughter or daughters, attain that age or marry, and such child or children

TRUSTS OF RESIDUARY PERSONALTY.

of any child or children of my said brother dying before me as, being a male or males, shall attain the age of twenty-one years or leave issue, or, being a female or females, attain that age or marry, in equal shares; but so that the child or children of any deceased child of my said brother shall take only the share which such deceased child would have taken if living; AND if there should be no such child or grandchild, then upon the trusts herein declared concerning the other —— ——ths of the said trust fund; AND if all such trusts should fail of effect, then in trust for my said brother, [*name*], absolutely.

on failure of children, on the trusts of the other shares;

25*b*. AND, as to another ——th part of the said trust fund, in trust for such child or children of my deceased brother, [*name*], as shall survive me and attain the age of twenty-one years or leave issue, or, being a daughter or daughters, attain that age or marry, and such child or children of any child or children of my said brother, [*name*], dead at my death, as being male survive me and attain the age of twenty-one years or leave issue, or, being female attain that age or marry, in equal shares as between or among brother and sisters; but so that the child or the children of any deceased child of my said brother shall take, equally between them, only such share as such deceased child would have taken if living; AND if there should be no such child or grandchild of my said deceased brother, then upon the trusts herein declared concerning the other —— ——ths of the said trust fund.

as to another —th for children of deceased brother at twenty-one, &c.;

if no such child, over;

25*c*. AND, as to each of the remaining ——th parts of the said trust fund, upon trusts in favour of each of my other brothers and sisters, [*names*], respectively, and their respective children or grandchildren, similar to the trusts above declared concerning the ——th share thereof limited in favour of my said brother, [*name*] (*ff*), and his children and grandchildren, and with the like limitations over of each such share on failure of the original limitation thereof, and with the like ultimate limitation thereof on failure of such limitations over in favour of the brother or sister to whom a life interest in such share is hereinbefore given. [*Insert a general proviso in restraint of anticipation of shares of females*, ante, *p.* 572, *Form* 9.]

as to the remaining —ths for other brothers and sisters by reference.

26. UPON TRUST to pay one-third of the income of the trust fund to each of my three nieces, [*names*], during her life, but

Trust for three nieces for life, then

(*ff*) This will be the brother mentioned in Form 25*a*.

TRUSTS OF RESIDUARY PERSONALTY.

for their children and issue at twenty-one, &c., with cross-limitations.

without power of anticipation; AND, after her death, to transfer one-third of the capital thereof to such her child or children living at my death, and such child or children then living of any her child or children then dead as shall attain the age of twenty-one years or marry (if more than one, in equal shares) and his, her, or their executors, administrators, and assigns; but so that the child or the children of any deceased child shall take only the share which his, her, or their parent would have taken if living; AND if there be no such issue, then to be possessed of such third part of the last-mentioned trust premises and the income therefrom, upon the trusts herein declared concerning the other two-third parts thereof and the income therefrom; AND, if there be no such child of any of my said nieces, then to transfer the whole of the last-mentioned trust premises in such manner as the survivor of my said nieces shall by will, or, being sole, by deed appoint; AND, subject thereto, in such manner as if the same were part of her personal estate, and she had died without leaving a husband.

POWERS AND PROVISIONS RELATING TO REAL AND PERSONAL PROPERTY LIABLE TO CONVERSION.

Maintenance clause (*g*) (*general form*).

1. MY TRUSTEES may, at any time after the death of my said wife [*or*, after the determination of all prior life interests (*h*)], apply the whole, or such part as they shall think fit, of the income of the expectant or presumptive share of any child [grandchild or other issue] of mine [*or*, of the said [*name*]], under the trusts here-

As to when maintenance and accumulation clauses are necessary.

(*g*) It is now unnecessary to insert an express maintenance and accumulation clause except in cases where sect. 43 of the Conveyancing Act, 1881, has no application, *e.g.* (1) where the period of vesting is postponed beyond the age of twenty-one years (see *Re Judkin's Trusts*, 25 Ch. D. 743; 53 L. J. Ch. 496); (2) where the interest is less than a life interest; (3) where the interest is absolute, but defeasible (*Re Buckley*, 22 Ch. D. 583; 52 L. J. Ch. 439; *Re Scott*, [1902] 1 Ch. 918; 71 L. J. Ch. 475; but see *Re Long*, [1901] W. N. 166); (4) where maintenance is to be provided for out of capital; or (5) where recourse may be had to the income of all the shares as a common fund for the maintenance of a class. As to the application of this section, see Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 113.

(*h*) Add here, if required:—

"Subject, nevertheless, and without prejudice to the payment of the several annuities hereinbefore bequeathed."

inbefore contained, for or towards the maintenance and education [or otherwise for the benefit] of such child [or grandchild or other issue], whether or not there is any other fund applicable to the same purpose, or any person bound by law to provide for the maintenance or education of such child [grandchild or other issue]: AND may, at their absolute discretion, either themselves so apply the same, or may pay the same to the parent or guardian or guardians of such child [grandchild or issue], for the purposes aforesaid, without seeing to the application thereof. [*Add proviso for accumulation of surplus income*, post, *p.* 584, *clause* 5.] POWERS, &c.

2. MY TRUSTEES may, after the determination or failure of every prior life or other interest or interests (if any), apply the whole, or such part as they shall think fit, of the income of any legacy or share of the said trust fund to which any person under the age prescribed for the vesting thereof (hereinafter called "a minor") shall for the time being be presumptively or expectantly or actually entitled under the trusts of this my will, or under some appointment in exercise of some power hereby given, for or towards the maintenance or education, or otherwise for the benefit of such minor, until he or she shall attain the age aforesaid [*or*, shall acquire a vested interest therein under any of the trusts, powers, and provisions hereinbefore contained]; AND my trustees either may themselves so pay or apply the same, or may pay the same to the parent or guardian or guardians of such minor [*or*, to any other person or persons], for the purposes aforesaid, without seeing to the application thereof or being bound to inquire whether the maintenance of such minor is or ought to be otherwise provided for. [*Add proviso as to accumulations*, post, *p.* 584, *clause* 5.] Proviso for maintenance of minors (*i*); trustees may pay maintenance money to guardians.

3. MY TRUSTEES may, in addition to the powers for maintenance and education by law vested in them, at their discretion, apply the whole or any part of the income or capital of the said trust fund in, for, or towards the maintenance, education, and advancement, or otherwise for the benefit of any of my said children during their respective minorities, in such manner as my trustees shall think fit; AND the surplus or residue thereof unapplied to the purposes aforesaid shall, from time to time, be invested by my Power for trustees to provide for maintenance, &c. out of capital.

(*i*) This form applies to trusts under which interests are to vest after twenty-one years of age.

POWERS, &c.

trustees in augmentation of the capital of the said trust fund, and shall follow the destination thereof (*k*).

Maintenance of infant children as a class irrespective of their shares.

4. My TRUSTEES may, in addition to the powers for maintenance and education by law vested in them, so long as there are two or more members of the same family who are infants, not having received any part of their respective shares by way of advancement, under the power in that behalf hereinafter contained, or in the case of daughters not having been married, and who are absolutely or contingently entitled to shares in the trust fund under the trusts hereinbefore contained, pay or apply the whole or any part of the income of the trust fund (but without prejudice to any share which has become payable to any member of such family (*l*)) for or towards the common maintenance, education, or benefit of such infants, without regard to the shares in which such infants are respectively so entitled.

Proviso as to accumulation of surplus income (*m*).

5. My TRUSTEES shall, during the suspense of absolute vesting of any such principal fund or shares as aforesaid, accumulate the

As to provision for maintenance and advancement.

(*k*) As the whole of the capital as well as the income is applicable for maintenance and advancement, the usual authority to apply accumulations for future maintenance is not needed.

(*l*) If so desired, the following words may be substituted for the words in parentheses in the text:—

"And for this purpose, with power to suspend payment of the capital and income of any share which has become payable to any member of such family."

But such an arrangement seems open to objection on grounds both of fairness and convenience.

(*m*) Sect. 43 (2) of the Conveyancing Act, 1881, provides for the accumulation of surplus income under the power of maintenance given by the Act, and directs that such accumulations shall be held for "the person who ultimately becomes entitled to the property from which the same arise." As to the meaning of these words, see *Re Bowlby*, [1904] 2 Ch. 685. In the absence of express provision to the contrary, where an infant is entitled to a life interest contingent on his attaining twenty-one, the accumulations form an accretion to the capital (*Re Bowlby, sup.*); but where he takes a vested life interest, the accumulations belong to him: *Re Humphreys*, [1893] 3 Ch. 1; and *Re Bowlby, sup.*; see notes on subsects. (2) and (3) of sect. 43 of the C. A. 1881, in Wolstenholme, 10th ed. p. 115. Accumulations may be directed during successive minorities, even of persons born after the testator's death (*Re Cattell*, [1914] 1 Ch. 177); but a direction to accumulate otherwise than during minority for a period extending beyond twenty-one years from the testator's death

The Thellusson Act (Accumulations Act, 1800).

residue (if any) of the income thereof by way of compound interest, by investing the same and the resulting income thereof from time to time in or upon any of the stocks, funds, shares, or securities hereby authorised for investments, for the benefit of the person or persons who, under the trusts, powers, and provisions herein contained, shall become entitled to the principal fund or share from which the same respectively shall have proceeded; with power for my trustees to resort to the accumulation of any preceding year or years, and to apply the same for or towards the maintenance or education of the person or persons for the time being presumptively or expectantly or actually entitled to the same, in the same manner as such accumulations might have been applied in case they had been income arising from the original trust fund in the year in which the same shall be so applied. POWERS, &c.

6. PROVIDED ALWAYS, that if at the expiration of twenty-one years from my death such principal fund or shares shall not have become absolutely vested in some person or persons under the trusts hereof, then the trust for accumulation lastly hereinbefore contained shall cease to operate, and the whole of the income shall thenceforth, until the capital shall become absolutely vested as aforesaid, be paid to the person for the time being presumptively or expectantly entitled thereto. Trust for accumulation to cease after twenty-one years from testator's death.

7. MY TRUSTEES may, after the death [*or*, future marriage] of my wife [after the death of the said [*tenant for life*]], or previously thereto, with her [his] consent in writing, apply any part, not exceeding one-half, of the capital of the vested or contingent presumptive or expectant share or respective shares of any child [or other issue] of mine [*or*, of the said [*name*]] in the trust fund, in or towards the advancement, or otherwise for the benefit of such child [or other issue], in such manner as my trustees shall think proper, whether such child [or other issue] shall be under the age of twenty-one years or not (*o*). Power of advancement (*n*).

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will be void, after the twenty-one years, under the Accumulations Act, 1800, s. 1, subject to certain exceptions in sect. 2. Where, therefore, Form 5 follows Form 2, Form 6 should be added.

(*n*) It is still necessary to insert in wills express powers of advancement, where desired, as no such powers are conferred upon trustees by any statute.

(*o*) The power of advancement should not be confined to minority where the vesting of the legatee's interest depends on survivorship or may otherwise be deferred beyond the period of majority.

POWERS, &c.

Power to advance shares of testator's issue, where life-interests are to cease on alienation (*general form*).

8. My TRUSTEES may, at any time or times after the determination or failure of every prior life or other interest (if any), at their absolute discretion, or, previously to such determination, with the consent in writing of every or any person entitled to any such prior life or other interest, raise and apply any part or parts not exceeding in the whole one-half of the then vested, expectant, contingent, or presumptive legacy, share, or portion of any person under any of the trusts or limitations contained herein, or in any codicil hereto, for the advancement or benefit of such person, as my trustees shall think fit.

Power of advancement by majority of trustees.

9. My TRUSTEES, or the majority (if more than two), with the consent of the guardians or guardian for the time being (if any), of my said children or issue respectively, or the majority of such guardians (if more than two), or, if there should not be any guardian or guardians, and after my children shall have attained the age of twenty-one years, then, at the absolute discretion of my trustees, may advance and apply any part or parts of the respective expectant or presumptive portion or share, portions or shares, of such child or issue respectively of and in the said trust premises (not exceeding the sum of £—— for each such child or issue), for the putting or placing him or her as a clerk, apprentice, or otherwise in or to any profession, trade, or business, or otherwise for his, her, or their benefit or advancement in the world, and also to advance to such of my said children or issue as shall settle in business with the consent or approbation of my trustees, and shall have attained the age of twenty-one years, the whole or any part or parts of such expectant or presumptive portion or share, portions or shares, although such child or children or issue respectively should not, at the time or respective times of advancing or applying the same for any or either of the purposes aforesaid, have acquired a vested interest or vested interests therein.

Power of advancement out of settled shares of daughters.

10. My TRUSTEES may, during the life of any such daughter of mine as aforesaid, with her consent in writing, and after her death then in the discretion of my trustees [but without prejudice to the aforesaid trust for the benefit of my said wife], apply any part not exceeding one-half of the principal or value of the presumptive or vested share of each or any of the children or issue of each daughter of mine as aforesaid under the trusts hereinbefore contained [or under any appointment to be made as aforesaid], in or towards the advancement or preferment in the world, or other-

wise, for the benefit of the child to whom such share shall actually or presumptively belong [but no such application as last aforesaid shall be made after the death of such daughter to the prejudice of the life interest of any husband in whose favour an appointment shall have been made by her, under the power for that purpose hereinbefore contained, without his consent]. POWERS, &c.

Power of advancement out of a mixed fund (*general form*).

11. My TRUSTEES may, at any time or times hereafter, raise by sale, mortgage, or otherwise, any part or parts, not exceeding in the whole one-half of the value, or estimated value (to be ascertained for that purpose in such manner as my trustees shall in their absolute and uncontrolled discretion think fit), of the then expectant or presumptive or vested legacy, portion, or share of any person, under any of the trusts, powers, or authorities herein contained, and pay or apply the same for his or her advancement or benefit as my trustees shall think fit; PROVIDED ALWAYS, that no such advancement shall be made of the capital of any trust moneys, funds, or securities whereof the income shall for the time being be payable to any person for her or his life under any of the trusts, powers, or authorities aforesaid, without her or his consent in writing.

Authority to trustees to raise £—— for advancement of son by first wife.

12. AND I AUTHORISE my trustees, other than my said wife [*second wife*], and notwithstanding her dissent (*pp*), at any time or times after my death, to raise and apply not more than £—— for the advancement in life of [*name*], my son by my first wife [*name*] [AND I exclude my said wife from a voice in this matter, not from any want of confidence in her, but in order to relieve her from any imputation which the exercise of such a discretion could possibly subject her to].

Powers for maintenance, education, and advancement, by reference to similar powers for children.

13. THE [all or any of (*p*) the] power[s] or provision[s] for [maintenance, education, and accumulation and application of surplus income during minorities, and] advancement hereinbefore contained for the benefit of my said child or children shall extend and be applicable for the benefit of all or any of the persons taking

(*pp*) If the second wife is not a trustee, say,

"I authorise my trustees, notwithstanding the dissent of my said wife [*second wife*] at any time, &c."

(*p*) Where the statutory powers for maintenance and education given by the Conveyancing Act, 1881, are relied on, all the words and letters in brackets in this form should be omitted.

POWERS, &c.

any share or interest under this my will as if the same power[s] or provision[s] were here repeated, with such alterations as the circumstances of the case may require, subject, nevertheless, and without prejudice to any trusts, powers, or provisions herein contained, to take effect in priority to the shares or interests of such persons respectively.

Appointment of trustees of will to be trustees for purposes of sect. 42 of the Conveyancing Act, 1881.

Incorporation by reference of the provisions of the section.

14.—(i) MY TRUSTEES shall be trustees of this my will for the purposes of the 42nd section of the Conveyancing Act, 1881, as amended by sect. 14 of the Conveyancing Act, 1911, the powers and provisions whereof shall apply to the real and leasehold hereditaments and premises hereinbefore directed to be sold [AND my trustees shall enter into and continue in possession of the rents and profits thereof in every case by sect. 42 of the said Act of 1881 provided for].

Direction as to investment of surplus income; and as to destination of accumulations.

(ii) Any surplus rents and profits and accumulations thereof may, during any such minority as in such last mentioned Act is provided for, be invested in any investments hereby authorised.

(iii) Without prejudice to the power of my trustees at any time to apply any accumulations of rents and profits during any such minority, as if the same were income of the current year, such accumulations shall be added to and devolve as personal estate with the said hereditaments and premises (*q*).

Power to trustees to manage and receive rents until sale of lands.

15*a*. MY TRUSTEES may, until sale of all the freehold and leasehold messuages, lands, and premises hereinbefore devised and bequeathed in trust for sale, receive the rents and profits, and cultivate, drain, manage, and improve such premises, and open and work mines, minerals, quarries, and brickfields, and erect, pull down, and repair houses and buildings, and cut timber and underwood for repairs or sale, and insure against damage by fire, and make allowances and arrangements and settle accounts with tenants and others, and accept surrenders of leases and tenancies, and stock, work, and carry on farms in hand, and generally deal with the said premises as if they were absolute owners thereof, and pay all or any charges, either of annual or gross sums, ground or other rents, and all other outgoings, including the costs of insurance under the Workmen's Compensation Act (which they are hereby authorised

(*q*) The provisions of sect. 42 of the C. A. 1881, as to the destination of "accumulations" differ from those of sect. 43. It is advisable to provide expressly how the accumulations shall devolve.

to effect at their discretion), and under the National Insurance Act, 1911, and apply all or any part of the clear surplus income arising from such hereditaments for or towards the maintenance and education during minorities [*or,* suspense in vesting], and generally for the benefit of the person or persons beneficially entitled thereto [*or,* of the said [*name*]], and to invest the remainder (if any) of such income in any of the investments hereby authorised, with power to vary such investments, and may resort to such accumulations for the maintenance or education or benefit of the person or persons for the time being actually or presumptively entitled thereto [*or,* of the said [*name*]]; AND, subject as aforesaid, I direct that such accumulations shall follow the destination of the hereditaments or premises from which the same shall arise.

Trustees may depute their powers of management to guardians.

15*b*. MY TRUSTEES may, from time to time, authorise and empower, by writing under their hands, or permit and suffer any person beneficially entitled under this my will to the rents and profits of the said trust premises, or any part thereof, if of full age, or any parent or guardian of any person so entitled who shall be for the time being under the age of twenty-one years, to receive such rents and profits, and to exercise all the powers of management hereinbefore given to my trustees, and in the case of and during the minority of any person so entitled as aforesaid to apply all or any part of the clear surplus income from such trust premises, towards the maintenance and education or benefit of such person; the remainder (if any) of such income to be invested in the names of my trustees, and to be applicable as aforesaid.

Power to trustees to appoint bailiffs, &c.

15*c*. MY TRUSTEES may, from time to time, in their absolute discretion, appoint and employ such agents, bailiffs, stewards, receivers, clerks, accountants, or other persons to assist them in the care and management of my said real estates, and in receiving and paying the rents, income, and produce thereof, or any part thereof, or otherwise in the execution of the trusts and purposes hereinbefore declared, and dismiss any such persons as to my trustees may seem best, and may pay or allow to such persons so employed such salaries or other compensation as my trustees shall in their discretion think fit.

Power to manage (*short form*);

16*a*. WHILE MY said freehold, copyhold, or customary and leasehold hereditaments, or any of them, shall remain unsold under

POWERS, &c. the trust for sale hereinbefore contained, my trustees may receive the rents and profits thereof, and may, in their absolute discretion, at the cost of the said trust premises, repair, drain, improve, insure from fire (*qq*), and manage the same, or such parts thereof as for the time being shall remain unsold, with all the powers in that behalf of absolute owners, including power to cut timber and underwood for sale, repair, or otherwise, and to make such allowances to and arrangements with tenants and others as they shall think just; AND to accept surrenders of leases and tenancies; AND with power also to adjust and determine in what proportions the expense of draining or other improvements shall be borne by the capital and income of the said trust premises respectively; AND ALSO may exercise all or any of the powers of management lastly hereinbefore contained, either in person or by salaried agents, bailiffs, or deputies.

power to delegate.

Application of rents until sale.

16*b*. THE RENTS and profits arising from the said freehold, copyhold, or customary and leasehold hereditaments and premises, from the time of my death until the sale thereof, shall from time to time (after payment thereout of the costs of fire insurance, repairs, management, ground rents, and other outgoings), be paid and applied in the same or the like manner in all respects as the annual income arising from the moneys to be produced by the sale of such hereditaments would have been payable and applicable, by virtue of the trusts hereinbefore contained, if such sale had been made.

Short power to lease lands for 21 years.

17. MY TRUSTEES may, with the consent of my said wife during her life [*or*, widowhood], and after her death [*or*, second marriage], at their discretion, demise at the best rent obtainable without fine or premium, for any term not exceeding twenty-one years in possession, any part of my freehold, copyhold, or leasehold hereditaments and premises, which for the time being shall remain unsold under the trust aforesaid.

Power to grant building and improving leases;

18. MY TRUSTEES may, from time to time, let my said freehold, copyhold, or customary and leasehold hereditaments and premises, or such of them as for the time being shall not be sold under the trust for sale hereinbefore contained, or any part or

(*qq*) As to the statutory power of trustees to insure, see Trustee Act, 1893, s. 18.

POWERS, &c.

parts thereof, for building, repairing, or improving purposes, for any term or terms not exceeding ninety-nine years, or for mining purposes for any term or terms not exceeding forty years, and for any consideration or considerations, either by way of fine, premium, rent, royalty, or otherwise, which they shall consider fair and adequate, or for cultivation, use, or occupation, at the best rent for the time being obtainable, without taking any premium or fine, either from year to year or for any term not exceeding twenty-one years from the time of letting, and with, under, and subject to such covenants and conditions as my trustees shall think proper.

mining leases, and husbandry leases (*short form*).

19. My trustees may exercise over or in respect of all or any real or leasehold hereditaments for the time being vested in them as trustees of my will, or any undivided share or shares thereof, all such powers of [sale (*rr*)] leasing and accepting surrenders of leases [and partitioning], and of entering into, varying, and rescinding contracts, and all powers incidental and subsidiary thereto respectively as are by the Settled Land Acts, 1882 to 1890, conferred on a tenant for life in possession of land.

Powers of leasing, &c. with reference to the S. L. Acts (*r*).

20. Until my said house in —— shall be sold, my trustees may demise the same, either with or without the furniture and other articles in or upon the same, for such terms, upon such conditions, and in such manner as they shall consider to be for the benefit of the person or persons entitled to the same, under the trusts of my will; And the rent and annual income reserved or produced thereby shall be applied in the same manner as if the same were income arising from the investment of the proceeds of the sale of the said house under the power and trusts herein contained.

Power to lease furnished house until sold.

(*r*) In the case of specifically devised estates where the S. L. Acts do not apply (as to which, see Key & Elph. 10th ed. vol. 2, p. 923, note (*c*)), say,

"My trustees may, at any time before any son or daughter of mine shall attain an absolute vested interest in possession in the said hereditaments hereinbefore devised" [*or*, "during the minority of the said ——" (*as the case may be*)], "exercise over or in respect of all or any part of the said hereditaments all such powers," &c., *as in this clause*.

(*rr*) Omit the word "sale" if there is a trust for sale.

POWERS, &c.

Power to grant licences to copyhold tenants to demise.

21. My TRUSTEES may at any time or times, and from time to time, so long as my said manor of —— shall remain unsold, grant to any customary or copyhold tenant or tenants of my said manor such licence or licences to demise or lease for any term not exceeding —— years in possession, all or any part of the messuages, lands, tenements, and hereditaments holden by such tenant or tenants respectively as my trustees shall think proper; but so that they accept and take the customary fines only for granting such licence or licences, and in all other respects conform to the custom of the said manor in relation thereto.

Power to apportion fee farm rents, &c. on sales.

22. My TRUSTEES may, upon any sale of a part or parts of any such hereditaments hereinbefore devised in trust for sale as are subject to a fee farm rent or perpetual rentcharge, or comprised in any lease at a yearly rent, apportion any such fee farm rent, rentcharge, or yearly rent, and make such arrangements and provisions for securing the payment by the purchaser or purchasers of the apportioned part or parts thereof, and for the performance and observance of the covenants and conditions of the grant or lease affecting the several parts of such hereditaments as aforesaid, and for giving and receiving such indemnities as may seem proper or expedient with regard to the payment of and liabilities in respect of such fee farm rents, rentcharges, and yearly rents.

Power to partition;

23*a*. My TRUSTEES may join in any partition of any of the hereditaments hereinbefore devised in trust for sale, and in any such partition may consent to any arrangement for the payment or receipt or securing of any money for equality of partition:

power to exchange;

23*b*. And may exchange any of such hereditaments for other freehold or copyhold hereditaments in England or Wales, in fee simple or held upon renewable lease for lives or years, or for an absolute unexpired term of not less than ninety-nine years, to be conveyed, as nearly as may be, to the uses and upon the trusts affecting the hereditaments so given in exchange immediately before such exchange (subject, as to any renewable leaseholds, to the payment of the expenses incident to each renewal out of the income thereof):

power to enfranchise.

23*c*. And may enfranchise or grant licences to demise any copyhold or customary hereditaments held of any manor, which shall be subject to the trust aforesaid.

POWERS, &c.

Discretionary power to trustees to relinquish or complete contracts.

24. My TRUSTEES may either complete any contract for sale or purchase of lands or hereditaments of any tenure which may have been entered into by me and remain uncompleted at the time of my death, or may rescind or relinquish the same, as circumstances may require, and as they, in their discretion (if it should be a matter of choice), shall judge most expedient: And my trustees may accept any such title (whether strictly marketable or not) as they, in their discretion, shall deem it prudent or advisable to accept, and, if they think fit, waive or dispense with any objections, requisitions, inquiries, or evidence, which they may be strictly entitled to insist on, make, or require, or which but for this authority they would be bound to make or require; And may make any arrangements for giving or receiving compensation for misdescriptions or misstatements in the particulars or conditions of contract for any such sale or purchase, or any other matter or thing relating to the same, and give indemnities to purchasers for any defect in title, and may pay or charge the same out of or upon my estate, or any part thereof, and generally may act in relation to any such sale or purchase, as if they were beneficially interested, without being responsible for any loss caused or occasioned thereby: And I declare, that all purchase and compensation moneys payable in respect of any such purchase, and all costs of and incident to the completion, rescission, or relinquishment of any such sale or purchase, shall be paid out of, and all purchase or compensation moneys and other moneys receivable in respect of any such sale or purchase shall form part of my residuary estate, and that all lands and hereditaments so purchased shall be conveyed to and be held by my trustees upon the trusts, and with and subject to the powers and provisions hereinbefore contained of and concerning the same estate.

Authority to trustees to complete alterations in testator's mansion-house, and

25. And whereas I have begun to make considerable alterations and improvements in my mansion house at ——, which may not be completed at my death (*s*). Now in such case I hereby empower my trustees to carry on and complete the said alterations

(*s*) This clause confers on the trustees a discretion in an event in which there would be an obvious inconvenience from their want of it. It often happens that trustees are obliged to resort to the Court in consequence of the testator having neglected to arm them with discretionary powers adapted to all possible circumstances.

POWERS, &c.

generally to improve his estate.

and improvements, or such part thereof as they shall think proper, out of the proceeds of my personal estate, or any other moneys which shall come to their hands by virtue of my will. AND I further empower my trustees from time to time to expend such sum or sums of money as they shall deem expedient in the repair and improvement of any of the messuages and other buildings, lands, and hereditaments hereby devised, [and also of the messuages, buildings, lands, and hereditaments to be purchased by virtue of the trusts and powers aforesaid,] and also in the erection of any new and additional messuages and other buildings on any such lands and hereditaments devised [or to be purchased] as aforesaid, and generally to make such expenditure and outlay in the improvement and amelioration of the trust estate during the continuance of the trusts hereby created, as they shall think proper and expedient (*t*).

Power to lay out streets, &c.

26. MY TRUSTEES may lay out all or any part of the hereditaments hereinbefore devised on trust for sale, for building purposes, and may appropriate and lay out any parts thereof, as they shall think fit, for streets, roads, ways, squares, gardens, or other open spaces, and may build, erect, lay down, make and execute upon, in, or under any parts of the same hereditaments, messuages, buildings, sewers, drains, gas pipes, water pipes, water courses, fences, and other works necessary to or in connection with building purposes.

Power to take and keep up a dwelling-house and establishment for infant children;

27. MY TRUSTEES may, at their discretion, apply the whole or any part of the income applicable under this my will, for the maintenance and education of my child or children, during his, her, or their minority or respective minorities, in or towards providing a suitable residence for such child or children, until he, she, or they respectively shall attain the age of twenty-one years, or marry, and keeping up an establishment there [upon the same scale, and in the same manner, as far as may be, as my establishment shall have been ordinarily kept up previously to my death];

(*t*) This clause gives great latitude of discretion; but where the vesting is long protracted, it is, of course, important that the trustees should have ample powers of management. The words in brackets are applicable where there is a power to invest proceeds of sale and conversion of the residue in the purchase of land: see *ante*, p. 560, Form 13.

And for that purpose may take either from year to year, or for any term of years, or the residue of any unexpired term, a proper and convenient dwelling-house, with or without garden, pleasure grounds, and other appurtenances, and pay all taxes, rates, assessments, costs of repairs and insurance, and other outgoings payable in respect of the dwelling-house and premises for the time being so taken, and also all expenses of keeping up such establishment as aforesaid; Provided always, that my trustees may, at their discretion, allow any child or children of mine, who shall have attained the age of twenty-one years or married, to reside in and occupy any such dwelling-house and premises so taken as aforesaid, jointly with any child or children of mine who shall for the time being be under the age of twenty-one years and unmarried, and that either without contributing to the expenses of such dwelling-house and premises, and the establishment to be kept up therein, or upon such terms as to contribution towards such expenses, and generally upon such conditions and subject to such restrictions as my trustees shall think fit.

Powers, &c.

Proviso that adult children may be allowed to share in the benefit of house and establishment.

28. My trustees may at any time, at the request in writing of my said wife during her life, and, after her death, at the discretion of my trustees, lay out any sum not exceeding £—— out of the trust fund in the purchase of some freehold, copyhold, or leasehold messuage or dwelling-house, situate in England or Wales (but so that any leaseholds be held for an absolute term, of which not less than —— years shall be then unexpired), and such furniture, plate, linen, china, and household effects as my trustees shall consider suitable to the same, and either with or without stables, gardens, or other pleasure grounds, and other appurtenances, and in payment of the expenses of and incidental to such purchase, and also (if my trustees shall, in their discretion, think fit) of the expenses of and incidental to repairing the said messuage so to be purchased, and of making the same and the gardens and pleasure grounds thereof (if any) fit for convenient habitation and occupation; And shall cause the same messuage, furniture, and premises, when so purchased, to be conveyed and assured unto and to the use of my trustees and their heirs, executors, administrators, and assigns respectively, according to the nature or quality thereof respectively to be held by them in trust to permit my said wife to have the personal use and occupation of the same messuage,

Power for trustees to purchase a house, &c. for residence of wife and unmarried daughters.

POWERS, &c.

furniture and premises as a residence for her and her younger children so long as she shall live and think fit to reside in the same messuage, she keeping the messuage, furniture, and premises insured against fire to the full value thereof in the names of my trustees, and also keeping the same messuage in tenantable repair, and paying the taxes and other outgoings affecting the same; AND after the death of my said wife, in trust to permit any daughters or daughter of my said wife who shall be spinsters or a spinster to have the personal use and occupation of the same messuage, furniture, and premises as their or her residence so long as they or she shall live and continue unmarried, and think fit to reside in the same messuage, they or she keeping the same so insured and in such tenantable repair and paying such taxes and other outgoings as aforesaid; AND subject and without prejudice to the trusts aforesaid, in trust that my trustees shall, in their discretion, sell the said messuage, furniture, household effects, and premises; AND I declare, that the net proceeds which shall arise from any such sale as aforesaid shall, subject to the payment thereout of the expenses incurred in or about such sale, or otherwise in or about the execution of any of the trusts aforesaid, fall into and constitute part of my residuary personal estate; AND that the rents and profits of the said messuage and premises, or of the unsold part thereof, shall as well during any suspension as after the determination of any such occupation by way of residence as aforesaid, be considered as income arising from my said residuary personal estate, and be paid and applied accordingly; PROVIDED ALWAYS, that if any messuages or hereditaments to be purchased as aforesaid shall be held by any lease or leases, my trustees shall be fully indemnified from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases.

Trustees' indemnity.

Authority to trustees to permit testator's widow to reside in his mansion-house;

29. IF AND so long as my trustees find it impracticable or inexpedient to sell or let my messuage or mansion house at ——, and the garden and pleasure grounds thereto belonging, they may, if they think proper, permit my said wife to reside in and occupy the said mansion house, garden, grounds, and premises, without paying any rent or other compensation for the same; my said wife nevertheless, during her residence as aforesaid, keeping the said premises in good order, repair, and condition, and paying all

widow to repair and insure.

taxes, rates, assessments, and other outgoings in respect thereof, including the expense of keeping on foot a policy of insurance in the sum of £——, to be effected in the names of my trustees. POWERS, &c.

30. NOTWITHSTANDING the trusts hereinbefore contained, it shall be lawful for my said son [*name*], either before or after marriage, by deed or will, to appoint the income of the trust fund, or any part thereof, unto or in favour of any wife or widow for the time being of my said son [*name*], during her life, either absolutely, or subject to such conditions and restrictions, and in such manner in all respects, as my said son shall think proper. Power to son to appoint income to wife for life.

31. IT SHALL be lawful for any and every daughter of mine, notwithstanding the trusts hereinbefore contained, by will or codicil, to appoint to any husband who may survive her, during his life, any part not exceeding one moiety of the income of the share or fund, the income whereof is hereby made payable to such daughter; AND also, subject to the trust hereinbefore declared in favour of the children of such daughter, and without prejudice thereto (*u*), to appoint to such husband during his life as aforesaid, the other or remaining moiety of such income. Power to daughters to appoint life-interests to husbands.

32. IF MY said daughter [any daughter or daughters of mine] shall marry before she [or they respectively] shall have attained the age of twenty-one years, my trustees may, if they in their discretion think fit, at any time or times, either in contemplation or after such marriage or marriages, settle the whole or any part of the share of [each] such daughter [respectively], in the trust fund, upon such trusts, for the benefit of such daughter so marrying and her intended husband, [and any future husband,] and children or more remote issue, [either by her then intended or any future husband,] or for the benefit of one or more exclusively of the other or others of those several objects, and in such manner and form in all respects, and upon such ulterior trusts, for the benefit of some issue of mine, or the husbands, wives, or intended husbands or wives, or Power to trustees to settle shares of daughters marrying under age.

(*u*) The effect of this power, it will be observed, is to enable the daughters by will to bequeath a *moiety* of the income to any husband as against the children, and the *entirety* as against all other objects of the trusts. For other provisions of a similar character, see *ante*, p. 532, Form 2*b*; p. 566, Form 3*h*; and p. 568, Form 4*g*.

POWERS, &C. all or any of the statutory next of kin of such issue, and with such powers, provisions, and declarations as my trustees, in their uncontrolled discretion, shall think fit. AND my trustees may either themselves act, or may appoint any other persons or person to act, either solely or jointly with them or either of them, as trustees of any settlement to be made under this power, and may apply or transfer such share or shares pursuant to such settlement; AND the expense attending any and every settlement or transfer hereby directed or authorised to be made, shall be paid out of the capital of the share to which the same shall or (but for this present clause) would relate.

Power to raise and pay £—— to daughter's husband.

33. NOTWITHSTANDING the trusts hereinbefore contained, my trustees may, with the consent in writing of my said daughter [*name*], raise, by sale of a competent part of the trust fund, any sum or sums of money, not exceeding in the whole the sum of £——, and pay and apply the money so to be raised for the benefit of the present or any future husband of her the said [*daughter*], for his own absolute use and benefit; but so, nevertheless, that if the said [*daughter*] should survive her present husband, and should marry again, my trustees shall have power to raise for the benefit of such future husband, so much only of the said sum of £—— as shall not have been raised for and paid to her deceased husband or husbands.

Power to mortgage for payment of debts, funeral and testamentary expenses, and legacies;

34. MY TRUSTEES may from time to time raise, by mortgage of any of the real and personal property hereinbefore devised and bequeathed to them in trust as aforesaid, such sum or sums of money as may be required for the purpose of paying the said expenses, debts, and legacies, or any other purpose of this my will, together with the costs and expenses attending or incident to the raising of the same (and to secure the repayment of the moneys so raised with interest at such rate as may be agreed upon by any such mortgage or mortgages to be made either in fee or for any term or terms of years, and either with or without a power of sale, and other usual or reasonable powers, clauses, and provisions), and to apply the money so to be raised in payment and satisfaction of such expenses, debts, legacies, and costs, as aforesaid, accordingly. AND I declare that no person who shall advance any money upon the security of any such mort-

protection of mortgagees;

gage as aforesaid, shall be concerned to see to the application, or to be answerable for the misapplication or nonapplication of the same money, or of any part of the same, or to inquire whether any such mortgage is necessary or proper for the purposes aforesaid or any of them, or into the sufficiency or insufficiency of my personal estate for the purposes aforesaid. And I further declare that if my trustees shall raise more money by any such mortgage than shall be required for the purposes aforesaid, they shall hold the surplus upon the same trusts and with and subject to the same powers and provisions, as if such surplus were part of the proceeds of sale of my residuary real and personal estate.

POWERS, &c.

application of surplus of money raised.

35. My trustees may, in their absolute discretion, partition or allot my residuary estate, both real and personal, or any parts or part thereof, among or to the respective actual or presumptive objects of the trusts, or any of such objects, in satisfaction, wholly or in part, of their, his, or her shares or share in the same premises in such manner, and charged or not with such sum or sums for equality of partition, as they or he shall think right; and may determine the value of the property so partitioned or allotted, by valuation or otherwise, as they shall think fit: And I declare that any such determination shall be conclusive and binding on all persons interested in my residuary estate, or any part thereof, under the trusts herein contained.

Power to partition among *cestuis que trust.*

36. My trustees may, at their discretion, at any time or times after my death, appropriate and allot any part of my residuary real and personal estate in or towards satisfaction of any legacy or any share in my residuary estate; And any property so appropriated or allotted, or the proceeds thereof if sold or converted, shall, until the same shall be payable or transferable to some person or persons absolutely entitled thereto, remain subject (so far as the nature of the property and circumstances will

Power for trustees to appropriate property in or towards satisfaction of legacies and shares of residue (*x*).

(*x*) The Land Transfer Act, 1897, s. 4 (1), gives to "personal representatives" a power to appropriate land in satisfaction of a legacy or share in residue; but as it requires a valuation in accordance with "prescribed provisions," and no rules of Court for this purpose have been made, this power is not at present in operation. See, as to trustees' power of allotment, *Re Brookes,* [1914] 1 Ch. 558.

POWERS, &c. permit) to the trusts and powers for sale, conversion, investment, and variation of investment and postponement of sale and conversion, and of leasing and management till sale, and all other incidental or ancillary powers and provisions herein contained or implied by statute, in the same manner as if no such appropriation or allotment had taken place [and so that any part or parts of my residuary real estate so appropriated or allotted, shall from the time of my death, for the purpose of transmission, be deemed to be of the nature of personal estate].

Trust to invest in purchase of lands to be settled to uses of will;

37. I DECLARE that my trustees shall from time to time, as and when they shall in their discretion think proper, lay out and invest the clear proceeds arising from the sale, calling in, and conversion of my residuary personal estate in the purchase of freehold or copyhold lands or other hereditaments held for an estate of inheritance in fee simple, to be situate in England or Wales; AND I direct, that the hereditaments so to be purchased as aforesaid, shall be conveyed and assured to my trustees upon the trusts and for the intents and purposes in this my will expressed concerning the real estates hereby devised, or upon and for such of the same trusts, intents, and purposes as shall be then subsisting or capable of taking effect; AND in the meantime, until the said trust moneys shall be so laid out, my trustees shall, at their discretion, invest the same in their names [*or*, under their or his legal control (*y*)], in or upon any of the investments hereby authorised, and may from time to time, at such discretion as aforesaid, vary, alter, or transpose all or any of such investments into or for others of a nature hereby authorised: AND I declare that the dividends and annual income arising from the said investments shall go and be applied in such and the same manner in all respects as the rents and profits of the hereditaments to be purchased with the said trust moneys would have gone and been applicable, if the same had been actually purchased pursuant to the trusts aforesaid.

in the meantime to be invested;

income from investments to be applied as rents.

General direction for investment of trust moneys.

38. MY TRUSTEES are hereby authorised to invest any moneys for the time being subject to the trusts hereof, or requiring or

(*y*) See *ante*, p. 559, note (*d*).

applicable for investment under this my will or any codicil hereto, in their names [or under their legal control], in or upon, &c. (*z*). POWERS, &c.

DEVISES IN STRICT SETTLEMENT AND PROVISIONS ANCILLARY THERETO (*a*).

1. I DEVISE [*parcels*] [and all other freehold messuages, lands, tenements, and hereditaments whatsoever, whether in possession, reversion, remainder, or expectancy, of or to which I shall be seised or entitled at my death, or over which I shall then have a general power of appointment or disposition by will, except what I may otherwise dispose of by this my will or any codicil hereto] (hereinafter called "the settled freeholds"), with all rights, easements, and appurtenances belonging or reputed to belong thereto or held or enjoyed therewith, to the uses (*c*) [*or*, unto and to the use of the said [*trustees*], their heirs and assigns] upon the trusts, and with and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same (that is to say),— Devise of freeholds (*b*).

(*z*) For form of investment clauses, see "Settlements (Personal)," *ante*, pp. 355 *et seq.*

(*a*) See also specific devises, *ante*, pp. 543 *et seq.* Other clauses relating to limitations in strict settlement of realty will be found amongst the precedents of "Settlements," *sup.*, and may be readily adapted to devises.

(*b*) Where the estates to be devised in strict settlement comprise copyholds or leaseholds as well as freeholds, the most convenient mode of arrangement is to limit the uses, &c. in strict settlement fully as regards the freeholds alone, and in a subsequent part of the will to devise the copyholds and bequeath the leaseholds upon uses and trusts respectively corresponding to the uses of the freeholds: see Forms 32 and 33, *post*, p. 619. As to description of parcels, see *ante*, p. 543, note (*t*).

(*c*) Where lands are intended to be limited by will to uses in strict settlement or any other series of uses, it is better to devise them directly to the intended *cestuis que use* than through the medium of a devisee to uses. If the testator has a power of appointment, and the devise operates as an execution of such power, the effect of a devise so framed is to transfer the use to the first nominee of the testator; in other words, to vest the legal estate in the devisee to uses (who is really intended to take nothing), and confer on the intended *cestuis que use* equitable interests only. The words in brackets will be used where it is intended that the trustees shall take the legal estate, and that the beneficial interests shall be merely equitable. Suggestion as to the mode of devising to uses.

STRICT SETTLEMENT.

General power of appointment to one person.

2. To THE USE of [*or*, in trust for] such person or persons, for such estate or estates, and interest or interests, in such shares (if more than one), and with and subject to such powers and provisions as [*name*] shall [while not under any coverture (*d*)] by any deed or deeds, revocable or irrevocable, or [whether under coverture or not (*d*)] by will or codicil, from time to time appoint: AND in default of, and subject to any such appointment,—

General power of appointment to two persons jointly, and the survivor.

3. To SUCH USES, upon such trusts, and with and subject to such powers and provisions as [A.] and [B.] shall by any deed or deeds, revocable or irrevocable, from time to time jointly appoint [AND in default of and subject to any such appointment, as the survivor of them shall by any deed or deeds, revocable or irrevocable, or by will or codicil, from time to time appoint]: AND in default of, and subject to, any such appointment,—

Limitation of a rentcharge.

4. To THE USE that my said wife, [*name*] [*or*, [*name*], the wife of the said [*tenant for life*]], and her assigns, shall receive during her life [*or*, widowhood] a yearly rentcharge of £——, to be charged upon and issuing out of the settled freeholds, and to be paid by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, without any deduction whatsoever, except for death duties; the first quarterly payment of the said yearly rentcharge to be made on such of the said days of payment as shall happen next after my death [*or*, after the death of the said [*tenant for life*]]: AND subject and charged as aforesaid,—

Limitation of a term of years (*e*).

5. To THE USE of the said [*trustees*], for the term of —— years, to commence from the day of my death, without impeachment of waste, upon the trusts and with and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same; AND from and after the expiration or determination of the said term of —— years, and in the meantime subject thereto and to the trusts thereof,—

(*d*) The words in brackets may be used where the donee of the power is a female and it is desired to restrain her from making an appointment by deed during coverture.

(*e*) For the trusts of a term for raising portions, see *post*, Form 22, p. 612; and for trusts of a term for raising money for payment of debts, *post*, Precedent XVII., p. 660.

STRICT SETTLEMENT.

6. To THE USE of [*or*, In trust for (*f*)] [*name*] and his assigns, during his life [without impeachment of waste]: with remainder,— Limitation of a life estate.

7. To THE USE of [*or*, in trust for (*f*)] [*name*], the wife of [*husband*], during her life [without impeachment of waste], but so that she shall not, during her present, or any future coverture, have power to alien, charge, or otherwise dispose of the rents and profits of the settled freeholds by way of anticipation: with remainder, &c. The same, to a woman with restraint on anticipation.

8. To THE USE of the said [*trustees*], their heirs and assigns, during the life of [*name*] [without impeachment of waste], upon trust that, if at the time of my death [*or*, at the time when this present limitation shall take effect in possession], no act or event shall have been done or happened whereby the life interest hereby given to the said [*name*] in the settled freeholds, or any part thereof, would, if the same were absolutely given to him, wholly or partially vest in, or belong to, or be charged in favour of some other person or persons, then the said [*trustees*], or other the trustees or trustee for the time being of this my will shall allow the said [*name*] to enter into, and retain possession, and receive the rents and profits of the settled freeholds [without impeachment of waste], during his life, or until some act or event (other than the exercise of any power hereby or by statute conferred on him) shall be done or happen whereby his said life interest would, if absolutely given to him, vest in, belong to, or be charged in favour of some other person or persons: AND in the event of the failure or determination during the life of the said [*name*] of the trust hereinbefore declared in his favour, I declare that my trustees shall immediately upon, and from, and after such failure or determination, enter into and during the remainder of the life of the said [*name*] retain possession of the settled freeholds, and manage the same as they shall think proper, in like manner as if they were the absolute owners thereof [*or*, in like manner as if they were the trustees appointed to manage, and superintend the management of land to the possession of which an infant is beneficially entitled under Limitation of a life interest terminable on alienation. on failure or determination of life interest trustees to enter;

(*f*) The words in brackets will be used where the legal estate is in the trustees.

STRICT SETTLEMENT.

sect. 42 of the Conveyancing Act, 1881]: AND [I hereby authorise my trustees, in their absolute discretion, to pay or apply the rents and profits of the settled freeholds, or any part thereof, during the remainder of the life of the said [*name*], or for any shorter period or periods, continuous or discontinuous, to or for the personal support and maintenance of the said [*name*], or his wife or children or remoter issue (if any) for the time being, or the person or persons to become entitled presumptively, contingently, or in expectancy under any of the limitations hereinafter contained, or such one or more, exclusively of the others or other of such persons, and in such manner as my trustees shall think fit: AND subject to such discretionary power] I declare that my trustees, during the remainder of the life of the said [*name*], shall pay or apply the rents and profits of the settled freeholds to or for the benefit of the persons or person who under the limitations hereinafter contained would be, for the time being, next entitled in remainder to the same rents and profits if the said [*name*] were then actually dead: or may allow such person or persons to enter into and retain possession of, occupy, manage, and enjoy the same, and receive the rents and profits thereof [including the produce of timber, cut in a due and proper course of management, and of mines, quarries, and brickfields] during the remainder of the life of the said [*name*]: PROVIDED, nevertheless, that until my trustees shall have had express notice of some such act or event as aforesaid, they shall not be responsible or liable for allowing the said [*name*] to remain in possession or receipt of the rents and profits of the settled freeholds after such act or event shall have been done or happened. PROVIDED ALSO, that the powers hereby or by statute conferred on the said [*name*], other than and except [*specify any power to be excepted*], shall continue to be exerciseable by him, notwithstanding the failure or determination of his life estate under the trusts hereinbefore contained: AND from and after the death of the said [*name*],—

discretionary power to apply rents for benefit of bankrupt, &c.;

destination of income during remainder of life of tenant for life.

Limitation to sons or daughters of tenant for life successively in tail (*g*).

9. TO THE USE of the first and every other son [*or*, daughter] of the said [*name*] successively, in remainder one after another,

(*g*) In the case of a son or daughter dying in the testator's lifetime and leaving issue inheritable under the entail and living at the testator's death, the gift to such son or daughter is prevented from lapsing by **sect. 32 of the Wills Act, 1837.**

according to their respective seniorities, in tail [male]: with remainder—

Limitations in tail general by reference.

10. To THE USE that all and every the persons or person to whom estates, or an estate in tail male are, or is hereinbefore limited, may severally, in remainder one after another, take estates in tail general in the same order and succession as they respectively take estates in tail male: with remainder—

Clause reducing estates tail of persons born in testator's lifetime to estates for life.

11. PROVIDED ALWAYS, that if any person to whom an estate tail [male], by purchase, is hereinbefore devised should be born in my lifetime [or in due time after my decease] (*h*), then, and in every such case, I hereby revoke the limitation in tail hereby made to such person, and in lieu thereof I devise the freehold hereditaments, to the use of such person and his or her assigns during his or her life [without impeachment of waste], with remainder to the use of the first and every other son of such person successively, in remainder one after another, according to their respective seniorities in tail [male]: with remainder to the use of his or her first and every other daughter successively, in remainder one after another, according to their respective seniorities in tail [male].

Another form of clause reducing estates in tail male and in tail of persons born in testator's lifetime to estates for life;

12. PROVIDED ALWAYS, that if any person to whom estates in tail male and in tail general by purchase respectively are hereinbefore limited should be born in my lifetime, then, and in every such case, I hereby revoke the limitations hereby made in favour of such person, and in lieu thereof I devise the hereditaments comprised in the limitations so revoked, to the use of such person and his or her assigns, during his or her life; with remainder to the use of the first and every other son of such person successively, in remainder one after another, according to their respective seniorities, in tail male; with remainder to the use of the same first and every other son, successively, in remainder one after another, according to their respective seniorities, in tail general; with remainder to the use of the first and every other daughter of such person successively, in remainder one after another, according to their respective

(*h*) Without the words in these brackets, a person *en ventre sa mere* at the testator's death would be excluded from the proviso, as it is not for his benefit: see *Villar* v. *Gilbey*, [1907] A. C. 139.

STRICT SETTLEMENT.

seniorities, in tail male; with remainder to the use of the first and every other daughter of such person successively, in remainder one after another, according to their respective seniorities, in tail general [AND I declare that no person not actually born at the time of my death shall be deemed to be born in my lifetime for the purpose of the proviso and substituted limitations lastly hereinbefore contained] (*i*).

reduction not to apply to children *en ventre sa mère.*

Series of limitations in strict settlement (*k*); to testator's eldest son for his life; remainder, to first and other sons of the said son in tail male; remainder, to each of testator's other sons for life, and to their sons successively in tail male; to sons of testator's first son successively in tail general; remainder, to daughters of testator's first son successively in tail general; remainder,

13. TO THE USE of my eldest son, [*name*], and his assigns, during his life, without impeachment of waste; with remainder to the use of the first and every other son of my said son, [*name*], successively, and in remainder one after another in tail male; with remainder to the use of each of my other sons during his life, without impeachment of waste; with remainder to the use of the first and every son successively of each such other son, in remainder one after another in tail male, so that the elder of my said other sons and his first and other sons and the heirs male of their respective bodies successively may be preferred to and take before the younger of my said other sons and his and their first and other sons and the heirs male of their respective bodies; AND after the determination or failure of the several estates hereinbefore limited as aforesaid, to the use of the first and every other son of my said son, [*eldest son*], successively, and in remainder one after another in tail; with remainder to the use of the first and every other daughter of the said, [*eldest son*], successively, in remainder one after another in tail; with remainder to the use of the first and every other son successively of my second and every other subsequently born son in tail; with remainder to the use of

(*i*) These words in brackets are merely declaratory of the law as it stands, and may be omitted: see note (*h*) above.

As to the order in which the several stocks or classes of issue are admitted.

(*k*) The limitations in the above form admit the several stocks and classes of issue in the following order, namely, the testator's eldest son and his first and other sons, the latter taking estates in tail *male;* next, the younger sons and their sons, the latter also taking estates in tail *male;* next, the sons and daughters in succession of the testator's eldest son take estates tail *general;* next, the sons and daughters also in succession of the testator's younger sons take estates tail *general;* next are admitted the eldest and other daughters of the testator and their first and other sons, the latter taking estates in tail *male* and tail *general;* and, lastly, the first and other daughters of testator's *daughters* take estates in tail *general.* These limitations embrace the whole line of the testator's descendants.

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the first and every daughter successively of my second and every other subsequently born son in tail, so that the first and every other son, and the first and every other daughter of the elder of my said second and other subsequently born sons, as tenants in tail as aforesaid, may take before and be preferred to the first and other sons in tail and the first and other daughters in tail of the younger of my said second and other subsequently born sons; AND after the determination or failure of the several estates hereinbefore limited as aforesaid, to the use of my daughter, [*name*], and her assigns during her life, but without power to dispose of the rents and profits thereof, or any part thereof, by way of anticipation; AND from and after the death of my said daughter, to the use of the first and every other son of my said daughter successively in tail male; with remainder to the use of the first and every other son of my said daughter successively in tail; with remainder to the use of the first and every other daughter of my said daughter successively in tail; with remainder to the use of each of my other daughters and her assigns during her life, but without power to dispose of the rents and profits, or any part thereof, by way of anticipation; AND from and after the death of each such daughter respectively, to the use of the first and every other son successively of each such daughter in tail male; with remainder to the use of her first and every other son successively in tail; with remainder to the use of her first and every other daughter successively in tail; so that the estate for life hereinbefore limited to the elder of my second and other subsequently born daughters, and to her first and other sons successively in tail male, and to her first and other sons successively in tail, and to her first and other daughters successively in tail, shall have precedence to and take effect before the estates for life limited to the younger of my second and other subsequently born daughters, and her and their first and other sons successively in tail male, and her and their first and other sons successively in tail, and her and their first and other daughters successively in tail; AND from and after the determination or failure of the several estates hereinbefore limited as aforesaid, to the use of my own right heirs.

to sons and daughters in tail general of testator's second and other sons; in default of such issue, to testator's daughter for life for her inalienable use; after her death, to her first and other sons in tail male; remainder, to her first and other sons in tail general; remainder, to her first and other daughters in tail general; remainder, to each of testator's other daughters successively for life for their inalienable use; and after the death of each such daughter to her first and other sons in tail male; remainder, to her first and other sons in tail general; remainder, to her first and other daughters in tail general; remainder.

14. To THE USE of my eldest son, [*name*], and his assigns, for his life without impeachment of waste; with remainder to the use of his sons successively, according to their respective seniorities,

Limitations in strict settlement

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in tail male; with remainder to the use of my son, [*second son*], and his assigns, for his life, without impeachment of waste; AND, after his death, to the use of his sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, to the use of my son, [*third son*], and his assigns, for his life, without impeachment of waste; AND after his death, to the use of his sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, to the use of my daughters, [*names*], and their respective assigns, during their respective lives, in equal shares as tenants in common, without impeachment of waste. AND as to the respective shares therein of each of them my said daughters after her death, to the use of her sons successively, according to their respective seniorities, in tail male; AND on failure of the issue male of any one or more of my said daughters, then and so often as the same shall happen, as to as well the share or respective shares originally limited to the daughter or daughters whose issue shall so fail, as the share or respective shares which by virtue of this present clause shall have become vested in her or them, or her or their issue male, to the use of the other or others of my said daughters, and her or their respective assigns, during her or their life or respective lives, in equal shares as tenants in common, without impeachment of waste; AND after the death of any such last-mentioned daughter, then as to the share or shares lastly hereinbefore limited to her, to the use of her sons successively, according to their respective seniorities, in tail male; AND if there should be a failure of such issue male of all my said daughters but one, then, as to the entirety of all the said estates, to the use of such only daughter and her assigns during her life, without impeachment of waste; AND, after her death, to the use of her sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, to the use of my said several sons and daughters as tenants in common in tail general, with cross-remainders between and among them in tail general; AND if all my said children except one should die without issue, to the use of such only remaining child in tail general; AND for default of such issue, to the use of my own right heirs for ever.

to testator's sons successively and their issue in tail male;

to testator's daughters concurrently and their issue in tail male;

cross remainders among the daughters and their issue. On failure of issue of all the daughters,

to testator's children concurrently in tail general, with cross remainders;

ultimate remainder to testator's heirs.

15. To THE USE of my elder daughter, [*name*], and her assigns, during her life; with remainder to the use of the first and every

Limitations to testator's elder daugh-

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other son of the said [*elder daughter*], successively, and in remainder, one after another, in tail male; with remainder to the use of the first and every other son of the said [*elder daughter*], successively, and in remainder, one after another, in tail; with remainder to the use of the first and every other daughter of the said [*elder daughter*], successively, and in remainder, one after another, in tail male; with remainder to the use of the first and every other daughter of the said [*elder daughter*], successively, and in remainder, one after another, in tail; with remainder to the use of my younger daughter [*name*], and her assigns, during her life; with remainder to the use of the first and every other son of the said [*younger daughter*], successively, and in remainder, one after another, in tail male; with remainder to the use of the first and every other son of the said [*younger daughter*], successively, and in remainder, one after another, in tail; with remainder to the use of the first and every other daughter of the said [*younger daughter*], successively, and in remainder, in tail male; with remainder to the use of the first and every other daughter of the said [*younger daughter*], successively, and in remainder, one after another, in tail; And in default of such issue, to the use of my own right heirs for ever.

ter for life; remainder, to sons of elder daughter successively, in tail male; remainder, to her sons in tail general; remainder, to her daughters in tail male; remainder, to her daughters in tail general; remainder, to younger daughter of testator for life; remainder, to sons of younger daughter in tail male; remainder, to her sons in tail general; remainder, to her daughters in tail male; remainder, to her daughters in tail general.

16. To the use of all and every the daughters and daughter of the said [*name*], if more than one, in equal shares, as tenants in common in tail [male]; And if and so often as there should be a failure of issue [male] of any such daughter, then as to both her original share, and also such other share or shares in the said hereditaments as by virtue of this present clause shall have accrued to her or her issue [male]; to the use of the others or other of such daughters, if more than one, in equal shares, as tenants in common in tail [male]; And if there should be a failure of issue [male] of all such daughters but one, or if there should be only one such daughter, then, as to the entirety of the said hereditaments, to the use of such one or only daughter in tail [male]; And in default or on failure of such issue, to the use [*other limitations*].

Limitation to tenant for life's daughters in tail, as tenants in common; cross remainders in tail.

17. To the use of all the daughters of [*name*], as tenants in common in tail [male], with cross-remainders between and among them as to both their original and accruing shares as tenants in common in tail [male]; And if there should be but one such

The same (*short form*).

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daughter, then to the use of such one or only daughter in tail [male]; with remainder, &c.

Proviso substituting for daughters dying in testator's lifetime, their respective issue.

18. PROVIDED ALWAYS, that, if any of the daughters of the said [*name*] shall have died in my lifetime leaving issue [male] who shall survive me, the heirs [male] of the body or bodies of such daughter or daughters shall take the like share or shares, estate or interest, as well original as accruing in the hereditaments hereby devised in settlement which such daughter or daughters respectively would have taken if she or they had died immediately after my death, and with the like remainders over on the failure of issue [male] of such daughter or respective daughters.

General proviso as to waste and anticipation (*l*).

19. EVERY life estate or interest hereby limited in the hereditaments hereinbefore devised in settlement shall be without impeachment of waste, and, as to any female tenant for life, without power to dispose of the rents and profits of the same hereditaments, or any part thereof, by way of anticipation during any coverture.

Proviso as to repairs of mansion house (*l*).

20. EVERY tenant for life or in tail [male or in tail] who shall become entitled in possession to the hereditaments hereinbefore devised in settlement under the limitations herein contained, shall keep my said mansion house and the buildings, gardens and pleasure grounds belonging thereto, in good and tenantable repair and condition.

Direction to devisees to assume testator's name and arms (*m*);

21. EVERY person (not being a peer or peeress) who for the time being shall be entitled, by virtue of the limitations [*or*, trusts] hereinbefore contained, as [equitable] tenant for life or in tail [male or in tail] in possession, in the said hereditaments devised in settlement by this my will, and not previously having the surname and arms hereinafter required to be used, shall, within twelve calendar months after he or she shall become so entitled, or being an infant within twelve calendar months after he or she shall attain the age of twenty-one years, and also the

(*l*) As to equitable waste, see Judicature Act, 1873, s. 25 (3); and generally as to the law of waste, see K. & E. 10th ed. vol. 2, p. 724, note (*a*).

(*m*) As to these clauses, see *ante*, p. 447; and see Vaizey on Settlements, vol. ii. pp. 1262 *et seq.*, where this subject is very fully and ably discussed.

husband (not being a peer) of any female who shall become so entitled, shall, within twelve calendar months after his wife shall become so entitled, or after his marriage to her, whichever of these events shall last happen (unless prevented by death), take and use upon all occasions the surname of —— [*testator's surname*], either alone or in addition to his or her own surname (but so nevertheless that the name of —— shall be the last or principal name), and also bear my family arms [either alone or] quartered with his or her own family arms, and shall, within the twelve calendar months aforesaid (unless prevented by death), take such proceedings or steps as may be necessary to authorise him or her to assume such surname and arms; AND in case such person should refuse, neglect, or fail to comply with this proviso or direction in any respect within the twelve calendar months aforesaid, and also in case any such person, who shall previously have the surname and arms aforesaid, or who shall have assumed the surname and arms aforesaid in compliance with this present proviso, should at any time thereafter discontinue to use the same, then and in either of the cases aforesaid, and immediately after the expiration of the twelve calendar months aforesaid, or immediately upon such discontinuance as aforesaid (as the case may be), the [equitable] estate for life or estate tail or respective estates tail of every person, or the wife of every person (as the case may be), so refusing, neglecting, failing, or discontinuing as aforesaid, in the hereditaments hereby devised in settlement, shall absolutely cease and determine, and the same hereditaments shall in that case go and devolve to the person or persons next in remainder or reversion under the limitations hereinbefore contained, in the same manner as if the person who, or whose husband, shall so refuse, neglect, fail, or discontinue, being a tenant for life, were then dead, or being a tenant in tail [male or in tail] were then dead without having had heritable issue. [PROVIDED ALWAYS, that from and after the determination under the proviso lastly hereinbefore contained of the estate hereinbefore limited to any person who, or whose husband, shall so refuse, neglect, fail, or discontinue as aforesaid, and who shall be a tenant for life under

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in case of neglect or failure, the estate of such person to cease (*n*);

(*n*) As to the meaning of the words "refuse or neglect" and their applicability to infants, see *Re Edwards*, [1910] 1 Ch. 541.

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the trusts hereinbefore contained, the hereditaments in respect of which such event shall have happened shall remain and be to the use of the said [*trustees*], their heirs and assigns, during the life of such person, upon trust, from time to time to pay the rents and profits thereof, or permit the same to be received by the person or persons for the time being next entitled in remainder, under or by virtue of such of the ulterior trusts affecting the said hereditaments as shall have actually become vested and taken effect.]

proviso as to appointment made by persons neglecting, &c.

And I hereby declare, that, in the event of the cesser or determination of the estates or estate of any person under the proviso in that behalf hereinbefore contained, by reason of the neglect or failure of such person, or the husband of such person, to comply with the proviso and direction aforesaid, any appointment or appointments which any such person may have made in favour of his or her wife or husband, or children respectively, by virtue of any the powers hereinbefore contained shall be absolutely null and void [*or*, shall not be prejudiced or affected].

Declaration of trusts of a term to raise portions for testator's younger children.

22. The settled freeholds are hereby limited to the said [*trustees*] for the said term of —— years, upon trust that if there shall be any younger child or children of mine (meaning thereby any child or children who survive me, and being male, attain the age of twenty-one years, or, being female, attain that age or marry [or who die in my lifetime leaving issue surviving me], other than any son or daughter of mine who on my death, or before his or her attaining the age of twenty-one years, shall become entitled hereunder to the settled freeholds for the first estate for life), then my trustees (*o*) shall, by mortgage of the settled freeholds, or a competent part thereof, for the whole or any part of the said term, or by the felling and sale of timber growing thereon, or by and out of the rents and yearly profits of

(*o*) If separate trustees of the "portions" term are appointed, then for the words "upon trust . . . that my trustees," substitute—

"Upon trust . . . that the said [*trustees*], or the survivors or survivor of them, or other the trustees or trustee for the time being of the said term of —— years (hereinafter called 'the portions trustees')";

and substitute "the portions trustees" for "my trustees" throughout the clause.

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the premises, or by all or any of those ways and means, or by such other means as my trustees shall think expedient, raise the sum of £—— [free from death duties] for the portion of each younger child of mine, and pay the same to him or her, or to his or her representatives; AND upon further trust that my trustees shall, by any such means as aforesaid, raise such annual sum not exceeding £—— [free from death duties], as they shall think fit, for the maintenance, education, or benefit of each child for the time being entitled in expectancy to a portion, and apply the same accordingly, either directly or by paying the same to his or her guardian or guardians without seeing to the application thereof: PROVIDED ALWAYS, that my trustees may, at any time or times, in their discretion, by all or any of the means aforesaid, raise any sum or sums of money not exceeding in the whole one-half of the then presumptive or expectant portion of any child of mine, and apply the same for or towards the advancement or benefit of such child as they shall think proper.

advancement clause (*p*);

Power to male tenants for life (who shall become entitled in possession) to jointure.

23. IT SHALL be lawful for any and every male person, who by virtue of this my will shall become entitled to the actual possession or to the actual receipt of the rents and profits of the settled freeholds, either before or after he shall become so entitled, but subject and without prejudice to the uses, trusts, limitations, and powers preceding or overriding the estate of the person exercising this present power, at any time either before or after marriage, by deed revocable or irrevocable, or by will or codicil, to appoint to any woman whom he may marry a rentcharge or rentcharges, not exceeding the annual sum of £— —, to be issuing out of, and charged upon the settled freeholds, for her life, or any less period, to be payable by way of jointure at such times and in such manner as the person exercising the present power shall direct, without any deduction [except for death duties]; AND ALSO to charge the settled freeholds, or any part or parts thereof, with any sum of money not exceeding in the whole the sum of £——, for the portion or portions of any of their respective children other than and besides an eldest or only son for the time being entitled to

Power to charge portions.

(*p*) An express maintenance clause may be dispensed with, in reliance on the provisions contained in sect. 43 of the Conveyancing and Law of Property Act, 1881.

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the said estates for an estate in tail [male] in possession, or in remainder expectant upon the death of his parent exercising the said power, and to appoint the hereditaments so to be charged to any person or persons for a term of years, in trust to raise the portion or portions so to be charged.

Power to female tenants for life to appoint rentcharges to husbands, and portions.

24. It shall be lawful for each and every female person hereby made tenant for life of the settled freeholds, either before or after she shall become actually entitled, under the limitations hereinbefore contained, to the possession or receipt of the rents and profits thereof (but subject and without prejudice to the estates and limitations (if any) prior to the estate for life of the person exercising this present power), at any time either before or after marriage, by deed with or without power of revocation, or by will or codicil, to appoint to or in favour of any husband who shall survive her a rentcharge or rentcharges, not exceeding in the whole the annual sum of £——, to be issuing out of and charged upon all or any of the settled freeholds for the life of such husband, or for any less period, and to be paid at such times and in such manner as the person exercising this present power shall direct, without any deduction except for death duties; And also, &c. [*as in Form* 23].

Power to appoint rentcharges to husbands by reference.

25. Any and every person hereby made tenant for life, being a female, shall have the same or the like power of appointing one or more yearly rentcharge or rentcharges to or in favour of any husband surviving her, as is and are hereinbefore reserved to the several persons hereby made tenants for life, being males, of appointing rentcharges to and in favour of their surviving wives as aforesaid.

Proviso limiting the aggregate amount of rentcharges affecting the lands at one time.

26. Provided always, that the settled freeholds shall not, nor shall any part thereof, by virtue of the power [respective powers] hereinbefore contained, be at any one time subject or liable to the payment of any annual sum or sums exceeding in the whole the sum of £——; And if by virtue thereof the same shall or would, in case this present proviso were not inserted, be charged with a greater annual sum in the whole than £——, the payment of the annual sum occasioning such excess, or such part thereof as occasions the same, shall, during the time of such excess, be suspended.

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27. PROVIDED ALSO, that the settled freeholds shall not, under or by virtue of the power hereinbefore in that behalf contained, be liable to the payment of any larger sum or sums of money for portions than the sum of £—— in the whole.

Proviso limiting the amount of portions in the whole to a given sum.

28. IT SHALL be lawful for the said [*name*], if there shall be an entire failure of his issue at the time of his death, by his will or any codicil thereto, to charge all the settled freeholds, or any part or parts thereof, with any sum or sums of money not exceeding in the whole the sum of £——, with interest thereon at any rate not exceeding —— per cent. per annum, for the benefit of such persons or person, or for such purposes or purpose whatsoever as he shall think fit: AND in manner aforesaid to appoint for any term or terms of years to any person or persons, with or without impeachment of waste, the said hereditaments so to be charged as aforesaid for securing, raising, and paying such sum or sums respectively, with interest at the rate aforesaid.

Power to charge a gross sum by will.

Appointment of trustees of settlement for the purposes of the Settled Land Acts, and of sect. 42 of the Conveyancing Act, 1881.

29. MY TRUSTEES shall be the trustees of the settlement hereby created ["of the said hereditaments at ——" *or* "of the hereditaments hereby devised in strict settlement"], for the purposes of the Settled Land Acts, 1882 to 1890, and for the purposes of sect. 42 of the Conveyancing Act, 1881.

Proviso as to destination of accumulations of rents and profits (*q*).

30. IF ANY person who would, if of full age, be entitled to the possession or receipt of the rents and profits of the settled freeholds shall die, being a male, under the age of twenty-one years, or, being a female, under that age, and without having been married, then my trustees shall stand possessed of the rents and profits of the same hereditaments received by them during the minority of the person so dying and all accumulations and investments thereof, or so much thereof as shall not have been applied under any statutory power, and invest and apply the same as if the same were capital moneys arising under the Settled Land Acts, 1882 to 1890, from the settled freeholds.

Extension of powers under

31. NOTWITHSTANDING anything contained in the Settled Land Acts, 1882 to 1890, or in any Act or Acts for the time being in

(*q*) See, as to the advisability of inserting such a clause, *ante*, p. 588, note (*q*).

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the Settled Land Acts. Introductory clause (*r*).

force relating to settled lands respectively, the following powers in addition to, or extension of the powers conferred by such Acts shall (so far as not forbidden by any Act or Acts for the time being in force) be hereby conferred on, and vested in, and exerciseable by every tenant for life, or person having under those Acts the powers of a tenant for life, of or over the settled freeholds, and on, in, and by the trustees or trustee of the settlement thereof hereby created, that is to say:—

Notices to trustees of settlement, &c. dispensed with (*s*).

(i) Any tenant for life, or person having the powers of a tenant for life over the settled freeholds (*t*), may make a [sale, exchange, partition] lease, [mortgage, or charge], in exercise of any of the powers conferred on him by any of the Acts aforesaid, without giving previous notice of his intention to exercise any such power to any trustee, or to the solicitor of any trustee, and without the leave of the Court.

Mining rents not to be capitalised (*u*).

(ii) Under a mining lease, whether the mines or minerals leased are already opened and in work or not, no part of the rent shall at any time be set aside as capital money arising under the said Acts, but the whole of such rent shall go as rents and profits.

Power to make long leases, and fee farm grants (*x*).

(iii) Any lease of the settled freeholds or any part thereof or of any easement, right, or privilege of any kind over or in relation to the same may be made for any purpose whatever, whether involving waste or not, for any term not exceeding, in case of a

(*r*) Where it is desired to confer on tenants for life and trustees a series of powers in addition to or extension of the statutory powers, it may be convenient to group them together, preceded by an introductory clause, and consecutively numbered.

(*s*) See, as to notice of intention to exercise the statutory powers, sect. 45 of the Settled Land Act, 1882; sect. 5 of the Settled Land Act, 1884; sect. 7 (1) of the Settled Land Act, 1890; and sect. 39 (2) of the Finance (1909-10) Act, 1910.

(*t*) For an enumeration of limited owners having the powers of a tenant for life, see sect. 58 of the Act of 1882.

(*u*) See, as to the capitalisation of mining rents, sect. 11 of the Act of 1882, and the notes on this section in Wolstenholme, 10th ed. pp. 391 *et seq.* The statutory restriction in this respect is often found to be inconvenient. As to what is a "contrary intention" within the meaning of s. 11, see *Re Rayer*, [1913] 2 Ch. 210; *Re Hanbury's S. E., ibid.* 357.

Statutory powers of leasing.

(*x*) As to the terms for which leases may be granted under the statutory powers, see sect. 6 of the Act of 1882; and see also sect. 10 of the same Act giving power to the Court in certain cases to authorise leases for any term or in perpetuity.

building lease [999], in case of a mining lease [100] years, and in case of any other lease [42] years, and grants may be made of the said lands or any part thereof in consideration of rents in perpetuity, either by way of rentcharge, or secured by a condition of re-entry on non-payment thereof or otherwise as the person or persons for the time being exercising the powers of making leases and grants lastly hereinbefore contained shall think proper or expedient. STRICT SETTLEMENT.

(iv) The principal mansion house on the land hereby settled [*or*, my mansion house called —— Hall] and the demesnes thereof, and other lands usually occupied therewith may be sold or leased by any tenant for life, or person having the powers of a tenant for life, under the trusts and provisions herein contained without the consent of the trustees of the settlement hereby created or an order of the Court. Power for tenants for life to sell or lease principal mansion house, park, &c. (*y*).

(v) Any part or parts of the settled freeholds may be given in exchange for land in Scotland or Ireland; AND capital money arising under the Settled Land Acts, 1882 to 1890, from the premises hereby settled may be applied in the purchase of lands and hereditaments in such last mentioned countries, or either of them. Extension of powers to exchange and purchase lands (*z*).

(vi) Capital money arising under the Settled Land Acts, 1882 to 1890, or by virtue of the exercise of any power herein contained, or other capital money for the time being requiring or capable of being invested, subject to the payment of claims properly payable thereout and to the application thereof for any special object for which the same shall have been raised, may as and when received be, with the consent in writing of the tenant for life for the time being if of full age and competent to act, but otherwise at the discretion of the trustees or trustee for the time being of the settlement hereby created, invested, in or upon any of the investments hereby authorised for the investment of trust moneys (*a*). Extension of powers of investment and application of capital moneys.

(vii) Any tenant for life or person having the powers of a tenant for life over the settled freeholds may raise any sum or sums Power to raise money on mortgage for purposes not specified in Settled Land Acts.

(*y*) As to the restrictions with regard to sales and leases of the principal mansion house, &c., see sect. 10 of the S. L. Act, 1890.

(*z*) See, as to these powers, sects. 4 (8) and 23 of the Act of 1882.

(*a*) As to investment of capital moneys, see S. L. Act, 1882, s. 22.

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of money not exceeding in the whole the sum of £——, to be secured by mortgage of or charge upon all or any of the settled freeholds, with interest for the same at any rate not exceeding 5 per cent. per annum for the purpose of, &c. [*e.g.*, making any improvements authorised by sect. 25 of the Settled Land Act, 1882]; And for that purpose shall have the same powers in all respects as he would have if the money so to be raised were required for one of the purposes for which a tenant for life is by sect. 18 of the Settled Land Act, 1882, empowered to raise money on mortgage: And no person lending money purporting to be borrowed in exercise of this power shall be concerned to inquire as to the purpose for which it shall be alleged to be borrowed, or bound to see to the application thereof, or as to the propriety, regularity, or extent of any exercise of this present power; And the money which shall be borrowed in exercise of this power shall be applied in or towards payment for, &c. [*e.g.*, such an improvement as aforesaid] and subject thereto shall be deemed to be capital money arising under the Settled Land Acts, 1882 to 1890, and be applicable accordingly.

Protection of mortgagees.

Power to effect improvements without any certificate or order of Court.

(viii) Any capital money arising under the Settled Land Acts, 1882 to 1890, or any other Act or Acts for the time being relating to settled lands may be applied in payment for any improvement authorised by the same Acts or any of them according to a scheme for the execution thereof to be prepared by or on behalf of the trustees or trustee for the time being of the hereditaments hereby settled, or submitted by the tenant for life or person having the power of a tenant for life of or over the same hereditaments for approval, and approved by such trustees or trustee without any such certificate or order as is mentioned in sect. 26 of the Settled Land Act, 1882.

Power for a sole trustee to act.

(ix) A sole trustee for the time being of the settlement hereby created, may exercise all or any of the powers conferred on trustees of a settlement by the Acts aforesaid or any of them, and may receive and give effectual receipts for capital moneys arising thereunder or otherwise receivable under any of the trusts, powers, and provisions of this my will relating to the settled freeholds; And all notices under any of the same Acts given to such sole trustee shall be to all intents and purposes as valid and effectual

as if given to two or more trustees of the settlement hereby created. STRICT SETTLEMENT.

32. I DEVISE all my copyhold and customary messuages, tenements, lands, and hereditaments, whatsoever and wheresoever, whether in possession, reversion, remainder, or expectancy, except estates vested in me as mortgagee or trustee (*c*), and also except what I may otherwise dispose of by this my will or any codicil hereto, to the use of the said [*trustees*], their heirs and assigns, according to the customs of the several manors of which the same hereditaments are holden respectively [as to such of the same as are held of a manor where there is a custom to entail], upon such trusts, and with, under, and subject to such powers, provisoes, and declarations as shall correspond with the uses, trusts, powers, provisoes, and declarations hereinbefore expressed concerning the settled freeholds, or as near thereto as the tenure of the property and other circumstances will permit, but not so as to increase or multiply charges or powers of charging [AND as to such part of the same copyhold and customary hereditaments as are held of a manor where there is no custom to entail, upon trust for sale, so that until sale the rents and profits thereof shall be paid and applied as if they had arisen from the settled freeholds, and so that the net proceeds of such sale shall be paid to the trustees or trustee for the time being of the settlement hereby created of the settled freeholds, and be held and applied by them as capital moneys arising under such settlement]. Devise of copyholds to the uses declared of the freeholds (*b*).

33. I DEVISE and bequeath all my leasehold messuages, tenements, and lands situate, &c., with the appurtenances thereto belonging, unto the said [*trustees*], for all the estate, term, and interest therein which I shall have or be able to dispose of by will at the time of my death, upon trust out of the yearly rents and Bequest of leaseholds upon trusts to correspond with uses declared of the freeholds.

(*b*) The variations in brackets will be required where some portions of the copyholds are held of a manor in which there is no custom to entail. If all the copyholds are held under such a manor, then the words in the first brackets will be omitted, and those in the second brackets from "upon trust" onwards will be substituted for the words "upon such trusts," &c. in the text.

(*c*) See, as to this, sect. 88 of the Copyhold Act, 1894, *ante*, p. 477, note (*t*).

STRICT SETTLEMENT.

profits of the same leasehold premises, to pay and perform the rents and covenants reserved and contained by and in the several leases by which the same premises are respectively held; AND subject thereto, upon such trusts, and with and subject to such powers, provisoes, and declarations as shall correspond as nearly as may be with the uses, trusts, powers, provisoes, and declarations hereinbefore declared and contained concerning the settled freeholds, or as near thereto as the nature and tenure of the property will permit, but so as not to increase or multiply charges or powers of charging: but so that the said leasehold premises shall not vest absolutely in any person hereinbefore made tenant in tail [male or in tail] by purchase of the settled freeholds, who dies under the age of twenty-one years, or before he or she becomes entitled to the possession of the said leasehold premises, or the receipt of the rents and profits thereof, or would be so entitled but for the trusts affecting the same by virtue of any term created hereunder or under any codicil hereto, or under any statutory power, but on his [*or*, her] death shall devolve as if they had been freehold of inheritance, and had formed part of the said settled freeholds.

Bequest of chattels as heirlooms (*d*);

34. I BEQUEATH all my diamonds, with the settings thereof, plate, pictures, engravings, drawings, sculptures, books, linen, and articles of vertu whatsoever [being at the time of my death in my house called —— Hall (including any articles which shall or may have been removed therefrom for repair or other temporary purpose, or which shall or may have been purchased by me, and directed to be sent to my said house)], to the said [*trustees*], upon trust, to permit the same to devolve as heirlooms with the said house, so far as the rules of law and equity will permit; but so that the same effects shall not vest absolutely in any person hereby made tenant in tail [male or in tail] by purchase of the said house, unless such person shall attain the age of twenty-one years: but on the death of such tenant in tail [male or in tail], by purchase, the same effects shall go and devolve and remain in the same manner as if they were freeholds of inheritance and had been hereby devised in settlement to the uses and upon the trusts here-

(*d*) A form of bequest of chattels to be held as heirlooms independently of real estate devised in strict settlement will be found *ante*, p. 486, Form 29.

STRICT SETTLEMENT.

inbefore declared of and concerning my said house. And I direct that as soon as conveniently may be after my death, my trustees shall cause schedules and inventories to be taken of the said diamonds and other articles, and two copies to be made thereof, and shall sign each of the said copies and keep one of them, and leave the other at my said house; and shall from time to time cause the same copies to be signed by the person for the time being entitled in possession to the said house under this my will. And I direct my trustees at all times to keep the said diamonds and other articles adequately (so far as may be) insured against loss or damage by burglary, theft, or fire, and from time to time to inspect and examine into the state of the said articles of vertu and other effects, and cause such reparations and restorations and replacings to be made thereof from time to time as they shall think proper; such insurances, reparations, restorations, and replacings to be made at the expense of the person or persons for the time being entitled to hold, use, and enjoy the said diamonds and other articles under the trusts of this will.

direction to trustees to take an inventory;

and from time to time examine the effects.

TRUSTEE CLAUSES.

1. The power of appointing new trustees of this my will shall be exercisable by my said wife during her widowhood, and after her death or marriage by the said [*next tenant for life*] [*or*, by my said daughter, [*name*], and her said husband, [*name*], during their joint lives, and by the survivor of them during his or her life].

Power to specified tenants for life successively to appoint new trustees (*e*).

2. The power of appointing new trustees of this my will shall be exercisable by the person or persons who for the time being shall, by virtue of any of the limitations of this my will, be in the actual possession of or beneficially entitled to the receipt of the rents and profits of the hereditaments hereinbefore devised, or such of the same persons respectively as shall be of full age and otherwise competent.

Power to tenants for life of realty to appoint new trustees.

3. The personal representatives of the last surviving or continuing trustee of my will or of any special trust fund comprised

Power for representatives of last surviving or

(*e*) See Trustee Act, 1893, s. 10, and the notes on that section in Wolstenholme, 10th ed. pp. 258 *et seq.*

TRUSTEE CLAUSES.

therein (as the case may be), shall have power to appoint themselves, or some or one of them, either alone or jointly with any other person or persons, or to appoint any other person or persons to be a trustee or trustees of my will or of such special trust fund (as the case may be).

continuing trustee to appoint themselves trustees of the will or of distinct trusts under the same will (*f*).

4. PROVIDED ALWAYS, and I declare that the power lastly hereinbefore contained is not intended to apply to the trusteeship hereby constituted in respect of the said trust fund or sum of £—— hereinbefore bequeathed or settled for the benefit of my said sister, [*name*], and her children; but that when and so often as a vacancy shall occur therein, a new trustee or trustees shall be appointed by the said [*sister*], and the last mentioned trust fund shall thereupon, at the cost of such trust fund, be transferred to, or vested in such trustee or trustees accordingly.

Special power of appointment in regard to a separate trust fund.

Power to appoint separate trustees in respect of property in a colony.

5. IN CASE of the death or absence from the colony of —— for more than twelve calendar months, of any trustee of my said real and personal property in that colony, so devised and bequeathed to the said [*trustees of property in colony*], upon the trusts hereinbefore declared concerning the same, or in any other event by reason of which such a vacancy would occur, as mentioned in the 10th section of the Trustee Act, 1893, then it shall be lawful for the surviving or continuing trustees or trustee of such last mentioned property, or the personal representatives of such last surviving or continuing trustee, from time to time [with the consent of such one of my said daughters as shall be interested in such trust property (if living)], to appoint a person or persons resident in the said colony, to be a trustee or trustees of the same property, separately from the other trust property under my will, either in the room of the trustees or trustee of my property in the said colony existing before such appointment, or jointly with

(*f*) By sect. 10 (2) of the Trustee Act, 1893, "a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property." Apart from any express provision in the will, the donees of the statutory power cannot appoint themselves: *Re Skeats*, 42 Ch. D. 522; *Re Newen*, [1894] 2 Ch. 297; *Re Sampson*, [1906] 1 Ch. 435. The object of the latter part of this clause is to enable the representatives of the surviving or continuing trustee to appoint themselves as trustees.

any such trustees or trustee; AND with all such powers and authorities in respect of the property whereof he or they shall be appointed trustee or trustees, so far as applicable, as are herein given to the trustees of my other property hereby appointed (*g*). TRUSTEE CLAUSES.

6. ANY PERSON being a trustee of my will, who shall cease to reside in the county of ——, or within —— miles of such county, shall (*h*) be deemed to be a trustee incapable of acting in the trusts or powers contained in my will within the meaning of the 10th section of the Trustee Act, 1893, and such trustee shall thereupon cease to be a trustee of my will. Proviso that trustee residing elsewhere shall cease to be trustee.

7. I DECLARE that the statutory power of appointing new trustees of this my will [*or*, of any trust fund or trust property settled by this my will] shall from time to time be exerciseable with the consent in writing of the person or persons, being of full age and not under any disability, for the time being entitled to the [rents and profits or] income of the said trust premises [*or*, of such trust fund or trust property]; and if and so long as there shall be no such person, at the discretion of the person in whom [subject as is next hereinafter provided] such statutory power shall for the time being be vested. General proviso as to consents to appointment of new trustees (*i*).

8. IN ADDITION to the statutory provisions in relation to the indemnity of trustees, my trustees shall not be answerable or accountable for any defect or insufficiency in the title or evidence Indemnities to trustees (*k*).

(*g*) The introduction of the special power will not, of course, supersede the necessity for a power to appoint trustees of the general estate, which will be in the usual form.

(*h*) This clause is useful when trustees are required to manage a trading or farming concern, or when the trusts are otherwise of such a nature as to require constant or frequent personal superintendence at a particular locality. Provision in case trustee of a farm, &c. removes from the neighbourhood.

(*i*) The variations (in brackets) are applicable where separate sets of trustees are appointed by the will.

(*k*) The effect of the 24th section of the Trustee Act, 1893, is that indemnity clauses may generally be dispensed with, except where it is desired specially to indemnify trustees against the consequences of acts for which they would otherwise be responsible, as for breaches of trust. As to the duties of trustees with reference to the investment of trust moneys, and their liability in respect of leaving trust funds in the hands of co-trustees, see *Speight* v. *Gaunt*, L. R. 9 A. C. 1; *Robinson* v. *Harkin*, Statutory provision for the indemnity of trustees.

TRUSTEE CLAUSES.

of title to any hereditaments or property which they may purchase, or on the security of which they may lend money, under or by virtue of this my will, or, on lending any money on leasehold security, for dispensing wholly or partially with the investigation or production of the title of any lessor, or for any deficiency or depreciation in value of any hereditaments, investments, or other property in or upon which the said trust moneys, or any part thereof, may be invested, or for any loss which may happen to the trust estate. AND if any hereditaments, subject to rent-charges or rents or other charges, or to any covenants or conditions shall become subject to the trusts of this my will, my trustees shall be entitled to be indemnified out of the trust property for the time being subject to the like trusts and the rents, profits, and income thereof, in respect of any liability they may incur by reason or in respect of such rents, charges, covenants, or conditions, or of any covenants entered into by them on the purchase of such hereditaments or otherwise in relation thereto.

Special indemnity in respect of purchased land.

Authority to trustees to deduct annuities as remuneration for services.

9. I AUTHORISE my trustees to retain out of the income of the trust premises in every year, for each of my trustees for the time being acting in the trusts of this my will, an annual sum of £——, to be paid to him half-yearly, as a remuneration for his services [in addition to any payments for professional services], the first of such payments to be made at the expiration of six calendar months after my death, but so that this provision shall cease to operate if and so long as the number of trustees for the time being shall be more than ——.

Power for trustees to employ solicitors, agents, &c.

10. My trustees may, in their uncontrolled discretion, instead of acting personally, employ and pay a solicitor or any agent or other person to transact all or any business, or do any act of whatever nature required to be done in the premises, including the receipt and payment of money, and shall be entitled to be

[1896] 2 Ch. 415; *Wynne* v. *Tempest* (1897), W. N. 43; *Re Second East Dulwich, &c. Building Soc.*, 68 L. J. 196; *Wyman* v. *Paterson*, [1900] A. C. 271; and *Shepherd* v. *Harris*, [1905] 2 Ch. 310. In addition to the protection afforded to trustees by the Act of 1893, sect. 8 of the Trustee Act, 1888, enables them to plead the Statute of Limitations, subject to certain restrictions; and the Judicial Trustee Act, 1896, s. 3, relieves them in regard to breaches of trust where they act honestly and reasonably: *Re Allsop*, [1914] 1 Ch. 1.

allowed and be paid all charges and expenses so incurred, and shall not be answerable for the default of any person so employed or for any loss occasioned by his employment.

Professional trustee may charge for services.

11. And further, the said [*name*], or any trustee of this my will, being a solicitor (*l*) or other person engaged in any profession or business, may be so employed or act, and shall be entitled to and be paid all usual or proper professional or other charges for any business or act done by him or his firm in the premises, whether in the ordinary course of his profession or business or not, and although not of a nature requiring the employment of a solicitor or other professional person.

Power for trustee resident or going abroad to delegate his authority.

12. If at any time when any sale, purchase, or other dealing, matter, or thing relating to the sale, conversion, administration, or management of the trust premises, or the execution of any of the trusts or powers of this my will, shall be pending or in prospect, any trustee for the time being of this my will shall be travelling or residing, or intending to travel or reside abroad [*or*, in some country other than the country wherein the property to be sold, converted, administered, or managed shall be situate, or the trusts or powers are to be executed] such trustee may, by writing under his hand, with the consent in writing of his co-trustee or co-trustees, delegate to such co-trustee or to all or any one or more of such co-trustees who shall for the time being be resident in England [*or*, in the country wherein such property shall be situate, or such trusts or powers are to be executed], the execution of all or any of the trusts and powers of this my will, and may by powers of attorney or otherwise authorise such co-trustee or co-trustees to execute, make, and do, or concur in executing, making, and doing all such deeds, instruments, payments, receipts, acts, and things relating to any of the trusts, powers, or provisions of this my will, without being accountable or responsible for any loss occasioned thereby: Provided always, that no purchaser or person dealing with any trustee or trustees purporting to act under such delegation or authority as aforesaid

Protection to purchasers, &c.

(*l*) As to this provision making the solicitor a legatee, see *Re White*, [1898] 2 Ch. 217. The benefit of the provision will be forfeited if the solicitor attests the will: *Re Barber*, 31 Ch. D. 665; *Re Pooley*, 40 Ch. D. 1.

Solicitor legatee.

TRUSTEE CLAUSES.

shall be bound or concerned to inquire whether occasion for such delegation or authority has arisen or is likely to arise, or as to the propriety, regularity, or sufficiency thereof, or whether or not the same is at the time of such dealing valid and subsisting.

Advice.

13. I REQUEST my trustees, but without imposing any obligation on them, to employ and take the professional advice and assistance of my friend [*name*], of, &c., solicitor, in all matters relating to the trusts of my will wherein they may require professional assistance.

Trustees to be bound by the majority.

14. I DECLARE that in case a difference of opinion should exist among my trustees for the time being in regard to any of the trust affairs, or any act, matter, or thing proposed to be done in relation thereto, or in case, by reason of illness, infirmity, or temporary absence abroad, or for any other reason, the formal concurrence of any trustee in such act, matter, or thing cannot conveniently be obtained, the opinion and determination of the majority of the same trustees shall be conclusive, and the acts and proceedings of the majority of my trustees shall, for all the purposes of this my will, be deemed to be and be taken as the acts and proceedings of the whole or entire body of the same trustees, any rule of law or equity to the contrary notwithstanding.

Power to the trustees to determine questions concerning the construction and administration of the will;

15. MY TRUSTEES shall have full power and authority to apportion blended trust funds and to determine the amount of any deductions or allowances to be made in respect of any alleged advancement or loan by me in my lifetime to any of my children, and what articles pass under any specific bequest herein contained, and what moneys are to be treated as or are to be payable out of capital or income, and by whom and in what manner valuations are to be made for any purpose in the opinion of my trustees necessary or expedient for the carrying into effect any of the trusts, powers, or provisions of this my will or any codicil hereto, and generally to determine all questions or matters of doubt which shall arise in the execution of the trusts of this my will or any codicil hereto; AND I declare that every such determination, whether made upon a question actually raised or implied in the acts of my trustees, shall be binding on all persons interested under this my will or any codicil thereto.

TRUSTEE CLAUSES.

16. My TRUSTEES [The trustees or trustee for the time being of my said trust property in the colony of —— hereinbefore devised in trust for sale and conversion] may, in their [or his] absolute discretion, allow, pay, compromise, compound, enforce, waive, accept, or give real or personal security for, or give time without taking any security for, or refer to arbitration, any debts or demands whatsoever which may be owing from or to, or be made upon or against or in behalf of my estate [in the colony aforesaid], whether the same be legally enforceable or not, and upon such evidence as they [or he] shall think sufficient (*m*). Power to compound debts, &c.

17. PROVIDED ALWAYS, and I hereby declare that the said [*colonial trustees*], or other the trustees or trustee for the time being of my property in [*colony*] aforesaid hereinbefore devised and bequeathed to them in trust for sale and conversion shall from time to time remit the proceeds of such sale or conversion, and also the rents, profits, and income of and arising from such parts of the same property as for the time being shall remain unsold or unconverted to the said [*English trustees*], or other the general trustees or trustee of this my will to be received, held, and applied by such last mentioned trustees or trustee, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning my residuary estate. Proviso as to remitting proceeds of sale, &c. of property in a colony.

18. My TRUSTEES may exercise or concur in exercising all powers and discretions hereby or by law given to them, notwithstanding that they or any of them may have a personal interest in the mode or result of exercising any such power or discretion [but any trustee being so personally interested in any matter may abstain from acting therein except as a formal party, and leave his co-trustees or co-trustee to act alone in the exercise of such powers and discretions in relation to such matter]. Power to trustees to act though personally interested.

(*m*) The above clause is now no longer necessary in ordinary cases, similar powers being given by sect. 21 of the Trustee Act, 1893. It might, however, be properly inserted in a will relating to property in a colony or other country where similar powers are not implied by the law there. It might also be advisable, where required, to give a *special* executor such powers and expressly to exclude the general executors from exercising their statutory powers in respect of property of which a special executor is appointed: see *post*, p. 630, Form 9.

MISCELLANEOUS CLAUSES.

MISCELLANEOUS CLAUSES.

Indemnity to trustees of testator's marriage settlement in respect of breaches of trust.

1. I DECLARE that if the trustees or trustee of the settlement, dated, &c., executed on my marriage, have heretofore committed, or shall hereafter commit, any breach or breaches of trust with my express or implied consent, such trustees or trustee shall be fully indemnified against all liability in consequence thereof out of my residuary estate.

Condition against opposing probate (*n*).

2. IF WITHOUT the consent in writing of my executors, which they shall be at liberty to grant or refuse, any person shall dispute the validity of this my will, or any codicil hereto, or shall refuse to confirm the same, if required so to do by my executors, such person such forfeit all benefits hereby, or by any codicil hereto, given to him or her, and every such benefit not being residue, or a share of residue, shall fall into my residuary estate, or being residue or a share of residue, shall, with any addition accruing thereto under this provision, go to the other person or persons entitled to such residuary estate, as if the person incurring such forfeiture had not been included in the residuary gift.

Declaration that provision made for wife is upon condition of her giving up life interest under her marriage settlement;

3. THE SAID annual sums or yearly rentcharges of £——, and £——, hereinbefore limited to my said wife during her life, and widowhood respectively, are so limited upon condition that she shall, at her own costs and charges, within the period of —— calendar months next after my decease, by such ways or means as by my trustees shall be required, surrender, or otherwise release or dispose of her life interest, under the settlement executed on our marriage, in the several sums of stock in the same settlement mentioned, so that the income of the same several sums of stock may from time to time, during the life of my said wife, be received and enjoyed by the person or persons who would for the time being have been entitled thereto in case she were then dead.

(*n*) This condition, in the case of personal estate, is held to be void and *in terrorem* only (*Powell* v. *Morgan*, 2 Vern. 90), unless there is a gift over (*Cleaver* v. *Spurling*, 2 P. Wms. 526; *Stevenson* v. *Abington*, 11 W. R. 935); but in the case of real estate the condition may be valid without a gift over: *Cooke* v. *Turner*, 15 M. & W. 727; but see Jarman, 6th ed. 1549. See, further, as to such conditions, *Re Williams*, [1912] 1 Ch. 399.

MISCELLANEOUS CLAUSES.

in case of her neglect to do so after notice, the rentcharges to cease.

And I hereby expressly declare, that, in case my said wife shall refuse or neglect to make and execute such surrender or release within the period aforesaid, and should persist in such refusal or neglect for the further period of —— days after a demand or request in writing, delivered to my said wife or left for her at her last or usual place of abode, by my trustees, then, from and immediately after the expiration of the said period of —— days, the said annual sums or yearly rentcharges respectively hereinbefore limited to my said wife, or such of them as shall be then subsisting, shall absolutely cease and determine, notwithstanding that my said wife shall or may, at any time thereafter, be willing and desirous to make and execute, or actually shall make and execute such surrender or release as aforesaid, any rule of equity to the contrary notwithstanding (*o*).

Devisee to produce title deeds.

4. Provided always, and I declare, that all title deeds and muniments of title relating to the said hereditaments at ——, hereinbefore devised to my said son [*elder son*], are to be delivered to him upon the express condition that he do, within three calendar months after demand thereof in writing by my said son [*younger son*], his heirs or assigns, execute and deliver to my said son [*younger son*], his heirs or assigns, at the equal expense of both parties, a covenant or statutory acknowledgment and undertaking for the production and delivery of extracts from and copies of such of the said deeds and muniments as relate also to the said hereditaments at ——, devised to my last-mentioned son, such covenant or acknowledgment and undertaking to be in the usual form and to be settled, in case of dispute, by the counsel for or solicitor of my said son [*younger son*], his heirs or assigns; in default whereof I give the said title deeds and muniments of title to my said son [*younger son*], his heirs and assigns.

Remarks upon conditions requiring performance of an act by devisee or legatee.

(*o*) If a testator really intends to make compliance with the condition a *sine quâ non*, the intention should be placed above the possibility of misconstruction, by explicit declaration, as in the text, since points of this nature have occasioned much litigation: see *Clavering* v. *Ellison*, 7 H. L. C. 707; *Langdale* v. *Briggs*, 8 De G. M. & G. 429; *Hervey-Bathurst* v. *Stanley*, 4 Ch. D. 272. See also, as to the importance of the gift over in default of compliance with the condition, *Cleaver* v. *Spurling*, 2 P. Wms. 526; *Simpson* v. *Vickers*, 14 Ves. 341; *Tulk* v. *Houlditch*, 1 Ves. & B. 248; *Burgess* v. *Robinson*, 1 Mad. 172.

MISCELLANEOUS CLAUSES.

Advancements in testator's lifetime to children or grandchildren to be deducted from their shares (*p*).

5. ALL SUMS of money or other property which I have given or settled or covenanted, or agreed to give or settle, or which I may hereafter give or settle or covenant, or agree to give or settle, unto or upon any child or grandchild of mine for placing him or her in any profession, trade, or business, or for or towards his or her marriage portion, or otherwise for or towards his or her advancement or benefit, shall, in default of any direction to the contrary in writing under my hand, be taken in or towards satisfaction of the portion or share hereby given and provided for such child or grandchild respectively, and shall be brought into hotchpot and accounted for accordingly.

Advancements in testator's lifetime to be brought into account.

6. I DIRECT, that such sums of money as I have or shall have applied for the benefit of any of my children or grandchildren, to the amount at any one time of £—— or more, shall be taken in part satisfaction of the legacies hereby provided for him, her, or them; [AND in case such advancements to any legatee should exceed the amount of his or her legacy, the surplus shall be brought into hotchpot by such legatee in the distribution of my residuary estate, before he or she shall be entitled to share therein].

Advancement not to be in satisfaction of portions.

7. I DECLARE, that such advancements as I may make to any of my children [*or*, said nephews and nieces] shall be in addition to and not in satisfaction of any legacy or legacies, portion or portions, or other benefit given to him, her, or them by my will.

Pecuniary legacy to trustees in lieu of estate devised to uses, if sold by testator.

8. PROVIDED ALWAYS, that if, at the time of my death, I should have conveyed away my said estate called ——, or any part thereof, my trustees or trustee for the time being shall invest the sum of £——, or a proportionate part thereof, to be ascertained by them or him in such manner as they or he shall, in their or his absolute discretion, think fair and proper, upon trusts corresponding as near as may be with the uses hereinbefore limited and declared concerning the same estate as an equivalent.

Power to testator's partner to wind up

9. I EMPOWER my said son [*name*], to receive the credits of our said partnership firm, and in his discretion to settle, adjust, and wind up the accounts and transactions thereof, without any inter-

(*p*) See *ante*, p. 521, note (*q*).

MISCELLANEOUS CLAUSES.

ference on the part of my other executors hereinbefore named, whom I hereby expressly exclude from all participation in, or control under any statutory or other powers or otherwise over, or liability in respect of such credits, accounts, and transactions; AND I empower my said son to adjust, settle, waive, suspend, take personal or other security for or compound any accounts, claims, and demands whatever, in respect of, or which may be made by or on behalf of or against, the said partnership, and that upon such evidence, whether strictly legal or not, as he shall deem sufficient; AND I direct that my said son [*name*], after paying or providing for the debts owing by the said partnership firm, shall from time to time account for and pay over to my executors, my part or share in the net or clear proceeds of the credits received by him as aforesaid.

partnership affairs without interference of executors(*q*).

10. I DECLARE, that, in case any annuity or legacy herein directed to be paid out of any real estate, or any charge upon or limited interest in any real estate hereinbefore created or limited, should fail by being void by lapse or by any other means, such failure shall be for the benefit of the person or persons to whom such real estate is herein given, subject to such charge or limited interest.

Direction as to lapse of charges on lands.

11. [*Devise of realty and personalty to one person*, ante, *p.* 552, *Form 5b.*] AND I declare, that if the said [*devisee*] shall die in my lifetime, whether leaving issue or not, the devise and bequest hereinbefore made to him shall not lapse, but in such case my said [residuary] real and personal estate shall go to and vest in his heirs or devisees, executors, or administrators respectively, according to the nature and tenure of the property, as part of the real and personal estate of the said [*devisee*] respectively, as if he had been living at, and died immediately after my death.

Proviso against lapse of general or residuary gift (*r*).

12. IF ANY of my said children shall die in my lifetime without leaving issue living at my death, then the share hereinbefore given to him or her so dying in the said residuary trust premises shall

Proviso against lapse of children's shares of

(*q*) For a form of appointment of special executors of partnership shares or business, see *ante*, p. 473, Form 8.

(*r*) For forms of bequest of pecuniary legacies so as to prevent lapse, see *ante*, p. 509.

MISCELLANEOUS CLAUSES.

sink into the said trust premises, and be held and applied by my trustees for the benefit of my other children in the like manner as if the child so dying had been originally excluded from sharing in the said trust premises.

residue where the gifts are to them by name (*s*).

13. If any legatee be now dead, or shall have died before me, I give the legacy intended for him or her to his or her executors or administrators, to be applied as if the same had formed part of the personal estate of such legatee at his or her death.

General provision against lapse.

Provision where legatee or legatee's husband or parent is indebted to testator (*t*).

14. I declare, that no legatee under my will or any codicil thereto shall be entitled to receive his or her legacy (of whatever nature the same may be), until he or she shall have first paid to my executors all moneys owing from such legatee to me; And that no legacy hereby given to any female, who shall be married at my death or before the same is paid or transferred, shall be payable or transferable in case she or her husband, or his representative in the event of his decease, should stand indebted to me or my estate, until such debt or debts shall be paid by such husband or his representative; And that, where any legacy is directed to go to the children of any legatee in case of his or her death in my lifetime, such children shall take subject to first paying all debts due and owing to me from the parent or parents of such children.

Proviso as to time at which legacies are to be payable (*u*).

15. I direct that all the pecuniary legacies bequeathed by this my will or any codicil hereto (unless otherwise expressly directed), shall be payable within —— calendar months after my death, and if not then paid shall bear interest as from that time until payment at the rate of —— per cent. per annum.

(*s*) See, as to lapse of shares of residue, *Re Parker*, [1901] 1 Ch. 408; *Re Palmer*, [1893] 3 Ch. 369; *Re Allan*, [1903] 1 Ch. 276; *Re Wand*, [1907] 1 Ch. 391.

(*t*) See, as to this, *Re Briant*, 39 Ch. D. 471.

When legacies are payable;

(*u*) General pecuniary legacies, where no time is fixed for payment, are payable at the end of one year from the testator's death, though the executor may, if he think proper, pay them at an earlier period; and the same rule applies to general legacies of stock in the public funds (the transfer of which cannot be called for till the end of a year from the testator's death), but not to specific legacies of stock: *Davies* v. *Fowler*, L. R. 16 Eq. 308.

and carry interest.

The general doctrine is that legacies carry interest only from the period when they become payable: *Wood* v. *Penoyre*, 13 Ves. 326; *Pearson* v.

MISCELLANEOUS CLAUSES.

Death duties to be paid out of residue; charge of legacies on realty.

16. THE DEATH duties payable in respect of the several annuities and legacies given by my will or any codicil thereto, as well specific as pecuniary, and as well for any limited interest as absolutely, shall be paid out of the residue of my personal estate and effects; AND, in case the residue of the moneys to arise from my said personal estate and effects should be insufficient for the payment of the same annuities and legacies and the duty thereon, the deficiency shall in such case only be a charge upon and payable out of the moneys to arise from the sale of my said real estate.

Annuities and legacies to be free of duty.

17. I DIRECT that all the annuities and legacies given by my will or any codicil thereto be paid free of death duties.

Clause to exclude the rule in *Allhusen* v. *Whittell* (*x*).

18. NOTWITHSTANDING any rule of law or equity to the contrary my funeral and testamentary expenses and debts, including interest on debts accrued due from me at my death, and all instalments of any principal money payable out of my estate, shall, as between the persons entitled hereunder in possession and reversion respectively to the said trust premises [*or*, " my residuary estate "], or any part thereof, be charged to and payable exclusively out of capital, and all interest on such debts as from my death, and all annuities, yearly rents, and other periodical payments payable out of my estate (not being instalments of principal money), shall be charged to and payable out of income.

Pearson, 1 Sch. & L. 10. Generally, therefore, interest on legacies does not begin to run until the expiration of one year from the testator's death (*Lord* v. *Lord*, L. R. 2 Ch. at p. 789), and the effect of directing payment to be made at an early period after the testator's death is to accelerate the legatee's claim to interest: *Lord Londesborough* v. *Somerville*, 19 Beav. 295. A legacy to the testator's wife forms no exception to the general rule: *Re Whitaker*, 21 Ch. D. 657; *Re Bignold*, 45 Ch. D. 496; *Re Crane*, [1908] 1 Ch. 379. See, further, as to interest on general legacies, Theobald on Wills, 7th ed. pp. 187 *et seq.*

As to rule in *Allhusen* v. *Whittell*.

(*x*) Under the rule laid down in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295, and *Lambert* v. *Lambert*, 16 Eq. 320, applied to real estate in *Marshall* v. *Crowther*, 2 Ch. D. 199, each payment on account of funeral expenses, debts and legacies, as between tenant for life and remaindermen, is to be taken as having been paid not out of capital only, but with such portion of the capital as, with the income of that portion, is sufficient to meet such payment: see *Re McEuen*, [1913] 2 Ch. 704; and Gover, Capital and Income, 2nd ed. 132; and Key & Elph. 10th ed. vol. 2, pp. 953, 954, notes (*e*) and (*a*).

I. WHOLE OF PROPERTY TO WIFE.

PRECEDENTS.

I. WILL *giving the* WHOLE *of the* TESTATOR'S PROPERTY *to his* WIFE.

THIS IS THE LAST WILL of me, [*testator*], of, &c. I devise and bequeath all the real and personal property whatsoever and wheresoever, to which I may be entitled, or over which I have any disposing power at the time of my death (*a*), unto and to the use of my wife, [*name*], her heirs, executors, administrators, and assigns absolutely. I appoint my said wife to be sole executrix of this my will.

IN WITNESS whereof I have hereunto set my hand, this —— day of —— (*b*).

Attestation (*short form*).

Signed (*c*) by the said [*testator*] [with his mark], in the joint presence (*cc*) of us, who, in his presence, and in the presence of each other, have hereunto set our hands as witnesses. } [*Two Witnesses.*]

(*a*) As to what words will be deemed to be a sufficient reference to a special power authorising an appointment, see *Re Teape's Trusts*, L. R. 16 Eq. 442; *Re Batchellor* (1886), W. N. 64; *Re Mayhew*, [1901] 1 Ch. 677; *Kent* v. *Kent*, [1902] P. 108; *Re Weston's Sett.*, [1906] 2 Ch. 620; *Wrigley* v. *Lowndes*, [1908] P. 348; *Re Lane*, [1908] 2 Ch. 581; *Re Ackerley*, [1913] 1 Ch. 510; and see also Theobald, 7th ed. p. 248.

(*b*) As to what is a signature at the foot or end of a will, see Theobald, p. 30.

Attestation of wills.

(*c*) As to attestation, see Wills Act, 1837, ss. 9 and 10. As to wills made out of the Kingdom by a British subject, see Wills Act, 1861. This form of attestation expresses with precision all the formalities of execution which are requisite to the validity of a will. The longer form given at the end of the next precedent is, however, more generally used.

If the will is signed by "some other person" (see Wills Act, 1837, s. 9), say,

"Signed by [*amanuensis*], with the name and as the will of the said [*testator*], in his presence and by his direction, in the joint presence of us, &c."

The amanuensis should sign the testator's name. He may be a witness. The attestation must not be by a beneficiary under the will, otherwise he will forfeit the benefit, unless the will is afterwards confirmed by a codicil not attested by him: *Anderson* v. *Anderson*, L. R. 13 Eq. 381; *Re Trotter*, [1899] 1 Ch. 764; see Robbins & Maw, 4th ed. 320.

As to wills of soldiers and seamen on service, see *Addendum*.

(*cc*) As to meaning of "presence" in sect. 9 of Wills Act, see *Brown* v. *Skirrow*, [1902] P. 3.

II. WILL *giving a* LEGACY *to a* MARRIED NIECE, *and* DIRECTING *a* LEGACY *to be* APPROPRIATED *or* PURCHASED *for an* ONLY DAUGHTER *and her* HUSBAND *successively for* LIFE, *and then for* DAUGHTER'S CHILDREN. RESIDUE *of* REALTY (*if any*) *and* PERSONALTY *to* TESTATOR'S WIFE.

[*COMMENCEMENT*, *p.* 470, *Form* 1.]

1. [*Appointment of executors*, *p.* 472, *Form* 3.]

2. [*Specific bequests*, *pp.* 480 et seq.]

3. I BEQUEATH to my niece, [*name*], the wife of [*husband*], the sum of £—— for her sole and separate use (*d*). Legacy for separate use of niece.

4. [*Other pecuniary bequests*, *pp.* 504 et seq.]

5. I BEQUEATH to the said [*trustees*] £—— Two and a Half per Cent. Consolidated Stock, to be retained, appropriated, or purchased by them out of my personal estate within three calendar months after my death, and to be held upon the trusts hereinafter declared concerning the same; AND I direct that the death duties payable on the said sum of £—— Consolidated Stock, shall be paid out of my residuary personal estate. Bequest of stock to trustees.

6. MY TRUSTEES shall stand possessed of the said £—— Consolidated Stock hereinbefore bequeathed (*e*), upon trust to pay the income thereof to my daughter, [*name*], during her life, without power of anticipation; AND after the death of my said daughter, [*name*] [upon trust to pay the said income to her surviving husband (if any), during his life; AND after his death] to stand possessed of the said trust fund and the future income thereof, in trust for such child or children of my said daughter, [*name*], by her deceased [*or*, her present, or any future] husband, as (being a son or sons) shall attain the age of twenty-one years, or (being a daughter or daughters) shall attain that age or marry under that age; PROVIDED ALWAYS, that the child or children of any son of my said daughter, [*name*], who shall die under the

in trust for testator's daughter for inalienable use; after her death, for surviving husband (if any) and then the capital for children of daughter;

substitution of children of sons

(*d*) A legacy should be given to the separate use of a married woman, notwithstanding the Married Women's Property Act, 1882, s. 5, if it is wished to prevent the legacy from being subject to a covenant to settle after-acquired property, other than property given for her separate use, contained in a marriage settlement executed before 1883: *Re Stonor's Trusts*, 24 Ch. D. 195; *Re Whitaker*, 34 Ch. D. 227. Separate use.

(*e*) There is no power to vary investments. If the testator had intended to give such a power, he would have bequeathed, not a specific sum of stock to be appropriated or purchased, but a sum of money to be invested.

II. PERSONALTY: LEGACY FOR DAUGHTER AND CHILDREN.

age of twenty-one years, shall be entitled, and if more than one, equally, to the share in the said trust fund to which such son would have been entitled if he had attained the said age. And in case there should be no child or grandchild of the said [*daughter*] who shall acquire a vested interest in the said trust fund or any part thereof, then in trust for such person or persons as my said daughter, [*name*], whether covert or sole, shall by any deed or will or codicil appoint; And in default of and subject to any such appointment, in trust for the person or persons who, at the time of the death of my said daughter, would be entitled to her personal estate in case she had then died intestate and without leaving a husband, in the like shares and proportions as such persons (if more than one) would be entitled thereto.

dying before majority; in default of issue, in trust for such persons as daughter shall appoint; and in default of appointment, for her next of kin (*f*).

7. [*Advancement clause (if desired), p.* 585, *Form* 7.]

8. [*Residue of real (if any) and personal estate to wife absolutely, p.* 552, *Form* 1.]

9, &c. [*Trustee clauses, pp.* 624, 625, *Forms* 10 *and* 11.]

Testimonium.

In witness whereof I have hereunto set my hand this —— day of ——, and I have also set my hand to each of the [*six*] preceding sheets (*g*) of this my will.

[*Testator's Signature*] (*h*).

Attestation.

Signed by the said [*testator*], as his last will, in the presence of us, present at the same time, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses (*i*).

[*Two Witnesses.*]

(*f*) See, as to the necessity for this clause, *Re Lambert's Estate,* 39 Ch. D. 626.

(*g*) If the testator's strength is likely to fail, he should sign the last sheet and have it attested before he attempts to sign the other sheets, which is not essential. The witnesses usually sign only the last sheet.

(*h*) As to signature and attestation where the will is signed by an amanuensis, see *ante,* p. 634, note (*c*).

Attestation of a will containing alterations.

(*i*) If the will contains interlineations or erasures (which latter should be made with a pen, so as to show how the will originally stood), add—"the said testator having, before signing the same, caused the words, '[*interlined words*],' to be inserted between the fourth

III. WILL *giving the* WHOLE *of the* TESTATOR'S REAL *and* PERSONAL PROPERTY *to* ONE PERSON, *with* SUBSTITUTION *of his* CHILDREN *or* ISSUE.

III. REALTY AND PERSONALTY TO ONE, WITH SUBSTITUTION OF CHILDREN.

I, [*testator*], of, &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will: I appoint [A. B.], of, &c., to be sole executor of this my will: I devise and bequeath all the real and personal property to which I may be entitled, or over which I may have any disposing power, at the time of my death, unto and to the use of the said [A. B.] [his heirs, executors, administrators, and assigns] absolutely. But if the said [A. B.] should be dead at my death, I appoint [*executors*], of, &c., to be my executors and trustees; AND [subject to the payment of my funeral and testamentary expenses and debts] I devise and bequeath the said real and personal property unto and to the use of the child or children of the said [A. B.] living at my death, and the child or children then living of such child or children of the said [A. B.] as may be then dead [and his, her, or their heirs, executors, administrators, and assigns], absolutely, in equal shares, and so that the child or children of a deceased child shall take only such share as his, her, or their parent would have taken if living.

Appointment of executors.

General devise and bequest to A. B.;

If A. B. be dead, appointment of executors and trustees, and gift, subject to debts, to children of A. B. as tenants in common.

IN WITNESS, &c.

IV. WILL *of a* MARRIED WOMAN *under a* POWER *in her* MARRIAGE SETTLEMENT *in favour of her* HUSBAND.

THIS IS THE LAST AND ONLY WILL of me, [*testatrix*], wife of [*husband*], of, &c. In exercise of the power contained in an indenture, dated, &c., being the settlement executed on my marriage with my said husband, and of every other power me hereunto enabling, I direct and appoint that the trustees or trustee for the time being of such settlement shall pay the income of the trust funds therein comprised and thereby subjected to my appoint-

Appointment under power, of income to husband for life; capital to children [except eldest son]; in default of children to husband absolutely.

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and fifth lines of the third page; and the words, '[*erased words*],' to be erased from the ninth and tenth lines of the same page; and the words, '[*substituted words*],' to be interlined in lieu thereof."

IV. WILL OF MARRIED WOMAN.

ment to my present (*k*) husband, during his life; AND, after his death, shall transfer the said trust funds to such child or children of mine [other than my said son, [*name*]] as shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry if more than one in equal shares [*add, if authorised, substitutionary gift to issue of deceased children, as in p. 577, Form 19*]; AND, if there should be no such child, [or remoter issue] who shall live to attain a vested interest under the appointment hereinbefore made then the said trustees or trustee shall transfer the said trust funds unto my present husband, his executors, administrators, or assigns. AND I devise, bequeath, and appoint all other real and personal property whatsoever and wheresoever, of or to which I shall be possessed or entitled, or over which I shall have any power of disposal at my death, unto my said husband, his heirs, executors, or administrators, absolutely: AND I appoint my said husband sole executor of this my will.

Gift of all other property to husband absolutely.

IN WITNESS, &c.

V. WILL *of a* WIDOWER *with* FOUR CHILDREN, *containing* SPECIFIC *and* PECUNIARY BEQUESTS, *and* SPECIFIC DEVISE *of* LANDS *in* MORTGAGE. RESIDUARY REAL *and* PERSONAL ESTATE *to be* CONVERTED, *and the* PRODUCE DIVIDED *into* FOUR SHARES *for* BENEFIT *of* TWO SONS *and* TWO DAUGHTERS (ONE MARRIED, *the other an* INFANT). PROVISION *against* IMPROVIDENCE *of* YOUNGER SON (*l*).

[*COMMENCEMENT, p.* 470, *Form* 1.]

1. [*Appointment of executors and trustees, p.* 472, *Form* 3.]

2. [*Appointment of grandson as special executor of mortgage debt, p.* 473, *Form* 9.]

3. [*Specific bequests, p.* 480 et seq.]

(*k*) So far as it affects property which would not go to the heir or personal representative of the testatrix in default of appointment, the will would not be revoked by a subsequent marriage: Wills Act, 1837, s. 18.

(*l*) It will be convenient to set out the provisions of this will in paragraph form, and quite easy to do so, since the common forms intended to be incorporated in this precedent are, for the most part, framed on the assumption that they will be contained in numbered and consecutive paragraphs.

4. [*Household effects to be divided among children, p.* 483, *Form* 17.]

5. [*Bequest to daughter of debt owing on her husband's bond, p.* 491, *Form* 39.]

6. [*Bequest of mortgage debt to grandson, p.* 491, *Form* 40.]

7. [*Pecuniary legacies, p.* 504, *Form* 3 et seq.]

8. [*Direction as to time for raising legacies, p.* 523, *Form* 47.]

9. [*Legacies to be free of duty, p.* 523, *Form* 46.]

10. [*Direction to purchase annuity for servant, p.* 525, *Form* 1.]

11. [*Bequest of stock in the funds to trustees in trust for nephew for life, and then for his issue, p.* 531, *Form* 1.]

12. [*Specific devise to son of land in mortgage* cum onere, *except as to arrears of interest, p.* 546, *Form* 11.]

13. [*Residuary devise and bequest to trustees, p.* 553, *Form* 5*b*.]

14. [*Trust for conversion, with power to postpone, p.* 555, *Form* 1.]

15. [*Application of income until conversion, p.* 555, *Form* 2.]

16. [*Trusts of proceeds for payment of debts, &c., p.* 556, *Form* 3.]

Trusts of residue:

17. My trustees shall hold the residue of the moneys to arise from the sale, calling in, and conversion of my residuary estate, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

one-fourth for eldest son absolutely;

18. As to one equal fourth part or share of the said residuary moneys, my trustees shall hold the same in trust for my said elder son, [*name*], absolutely; And if he shall die in my lifetime, whether leaving issue or not, the said one equal fourth part or share shall go to his executors or administrators as part of his personal estate.

remaining three-fourths to be invested for benefit of other children and their issue.

19. As to the three remaining equal fourth parts or shares of the same residuary moneys, my trustees shall, at their discretion, invest the same respectively in their names [or under their legal control], in or upon any of the stocks, funds, or securities hereby authorised, with power at the like discretion to vary such investment into or for others of a nature hereby authorised.

20. As to one of such remaining equal fourth parts or shares of the said residuary moneys and the investments thereof, my trustees shall pay the income thereof to my younger son, [*name*], unless and until, &c. [*continue as on p.* 571, *Form* 6, *substituting the words* "such last mentioned part or share" *for* "the trust fund"].

V. VARIOUS TRUSTS FOR CHILDREN.

21. From and after the death of my said younger son, my trustees shall hold such last mentioned part or share and the future income thereof, upon trust, &c. [*continue as on p.* 571, *Form* 5*d*.]

22. [*Trust in default of children of younger son, p.* 571, *Form* 5*e*.]

23. As to one other of such remaining equal fourth parts or shares as aforesaid, my trustees shall pay the income thereof to my elder daughter, [*name*], during her life, but without power of anticipation during any coverture.

24, 25, 26. And from and after the death of my said daughter [*then for her husband for life: and then for her issue as she shall appoint, and, subject thereto, for children of elder daughter at twenty-one or marriage, &c., as on p.* 579, *Form* 24 *c, d, e, substituting the words* "elder daughter" *for* "sister," *and* "such last mentioned part or share" *for* "the same moiety of the said trust fund."]

27. If no child of my said elder daughter, [*name*], shall live to acquire a vested interest in such daughter's share [*ulterior trusts, p.* 565, *Form* 3*g*].

28. As to the last one other of such remaining equal fourth parts or shares as aforesaid, my trustees shall hold the same, and the income thereof, upon trust for my younger daughter, [*name*], absolutely, subject, nevertheless, as is next hereinafter provided.

29. Provided always, &c. [*power for trustees to settle younger daughter's share if she shall marry when under twenty-one years, p.* 597, *Form* 32].

Proviso against lapse of an aliquot share in residue.

30. If my said younger daughter, [*name*], shall die in my lifetime without leaving issue, then the one equal fourth part or share hereinbefore given to her of the said residuary moneys, and the investments for the time being representing the same and the income thereof, shall be held by my trustees, upon the trusts, and with and subject to the powers and provisions hereinbefore declared concerning the other three equal fourth parts or shares of the same moneys and investments respectively as if the same proceeds had hereby been originally divided into three equal parts or shares for the benefit of the several persons entitled to or interested in such three equal fourth parts or shares respectively, or such of the same trusts, powers, and provisions as shall at the time of my death be subsisting and capable of taking effect.

31. [*Investment clauses, pp.* 355 *to* 358.]

32, 33 & 34. [*Trustee clauses, pp.* 623 et seq., *Forms* 8, 10, 11, 15 *and* 18.]

In witness, &c.

VI. WILL *of* Widower Appointing *among* Children *by* Name Equally, *and* Directing *that* Advancements *are not to be* Brought *into* Hotchpot. Bequest *of* Annuity *to* Mother, *&c.* Gift *of* Residue *to* Surviving Children Equally.

[*COMMENCEMENT, p.* 470, *Form* 1.]

1. In exercise of the power given to the survivor of my wife, [*name*], and myself in our marriage settlement dated, &c., I now, having survived her, hereby appoint all the funds and property remaining subject to the trusts of the said settlement unto and among my four children, [*names*], in equal shares; Provided always, and I hereby direct and declare, that my said son, [*name*], shall not be liable to bring the sum of £—— already advanced to him or for his benefit into hotchpot: [*Appointment of executors with substitution in case of their not acting, p.* 472, *Form* 5. *Son at twenty-one to be executor with the others, p.* 473, *Form* 6. *Special executor of life policies, p.* 473, *Form* 7. *Appointment of guardian of infant children, with power to appoint a successor, p.* 476, *Form* 20. *Specific bequest of household furniture for daughters while unmarried, p.* 486, *Form* 28. *Specific bequest of policies of life insurance, p.* 491, *Form* 38. *Other specific bequests, pp.* 480 et seq. *Allowance to son during minority, p.* 506, *Form* 10. *Pecuniary bequests, pp.* 503 et seq. *Annuity to mother, and other annuities, pp.* 525 et seq. *Gift of residuary real and personal estate to surviving children equally, p.* 553, *Form* 7] (*m*). [*Trustee clauses, pp.* 623 et seq.]

In witness, &c.

(*m*) It will be convenient to set out these several provisions in paragraph form.

VII. DISTRIBUTION AMONG RELATIONS, &c. BY A CHILDLESS PERSON.

VII. WILL *of an* UNMARRIED MAN *or* WOMAN. VARIOUS PROVISIONS *for* BROTHERS *and* SISTERS. GIFT *of* RESIDUARY REAL *and* PERSONAL ESTATE *to* TRUSTEES *as* TENANTS *in* COMMON *for their own* USE *and* BENEFIT.

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of general executors*, *p.* 472, *Form* 3. *Bequest of leaseholds to brother A. with limited executorship*, *p.* 474, *Form* 10. *Specific bequests*, *pp.* 480 et seq. *Pecuniary legacies*, *pp.* 503 et seq. *Gifts of annuities to several*, *p.* 527, *Form* 3; *general directions as to annuities*, *p.* 529, *Form* 10. *Gift of settled legacy for benefit of brother B. and his issue*, *p.* 531, *Form* 1.] I bequeath unto the said [*trustees*] the sum of £—— with interest thereon at the rate of 4 per cent. per annum from the day of my death, clear of death duties, and all other deductions, upon trust to invest the same sum in or upon some of the stocks, funds [shares], or securities hereby authorised, with power to vary such investments; AND I direct that my trustees shall stand possessed of the said sum of £—— and the investments for the time being representing the same, and the interest and income thereof, in trust, &c. [*trusts for brothers and sisters and their respective issue, either p.* 578, *Form* 22; ibid., *Form* 23; *or p.* 580, *Form* 25. *Bequest of leasehold house and furniture to sister C.* for life, *remainder to her son D. absolutely*, *p.* 538, *Form* 3, mutatis mutandis. *Specific devise to infant nephew E., with gift over in case of his death under twenty-one to nephew F.*, *p.* 544, *Form* 5.] I devise and bequeath all my real and personal estate whatsoever and wheresoever not otherwise disposed of by this my will or any codicil hereto, unto and among the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises respectively, for their absolute use and benefit in equal shares as tenants in common. [*Appointment of trustees for purposes of Settled Land Acts, and of sect.* 42 *of the Conveyancing Act*, 1881, *p.* 615, *Form* 29. *Investment clauses*, *pp.* 355 et seq. *Trustee clauses*, 624 *et seq.*]

Bequest of legacy on trusts for benefit of brothers and sisters, &c.

Gift of residue to trustees absolutely.

IN WITNESS, &c.

VIII. WILL *of a* SPINSTER; *giving* LEGACIES *to* SERVANTS, *&c.;* CHARITABLE LEGACIES; RESIDUE *among her* FIVE BROTHERS *and* SISTERS; *and* PROVISIONS *for* FAMILY *of* DECEASED BROTHER *by* REFERENCE *to his* WILL.

VIII. WILL OF SPINSTER GIVING BULK OF PROPERTY FOR CHARITABLE PURPOSES.

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 472, *Form* 3. *Directions as to funeral, p.* 478, *Form* 1 *or* 2. *Specific bequests: wearing apparel to servant, p.* 480, *Form* 1 *or* 2; *specific articles by reference to schedule, p.* 484, *Form* 20. *Pecuniary bequests: legacies to trustees, p.* 504, *Form* 3; *legacies to servants, p.* 505, *Form* 7; *legacy to a widow to be paid by weekly instalments, p.* 506, *Form* 9. *Charitable legacies, pp.* 524 et seq., *Forms* 50 *to* 55. *Gift of residuary estate to trustees, p.* 553, *Form* 5*b*. *Trust for conversion, p.* 555, *Form* 1. *Application of income pending conversion,* ibid., *Form* 2. *Trusts of proceeds to pay debts, &c., p.* 556, *Form* 3. *Trust for investment of residue, with power to vary investments, p.* 559, *Form* 13.] My trustees shall stand possessed of the said residuary moneys and the investments thereof upon trust for my [*five*] brothers and sisters now living, and for the family (as hereinafter mentioned) of my deceased brother [A. B.], to be divided among them in equal shares (the family of my said deceased brother taking among them a single share only); AND I direct that the share so appropriated to the family of my said deceased brother shall be transferred by my trustees to the trustees or trustee for the time being of the will of my said deceased brother, and be held by such last-mentioned trustees or trustee upon such trusts and with and subject to such powers for investment and variation of investment and for the benefit of [B. B.], widow of my said deceased brother, during her life and widowhood, and after her death or second marriage for the benefit of the child or children of my said deceased brother, or any one or more of them as the said [B. B.] shall appoint, or otherwise in default of appointment, and upon and with and subject to such other trusts, powers, and provisions as are in the said will of my said deceased brother contained, with respect to his residuary personal estate and the proceeds and investments thereof. If any of my [*five*] brothers and sisters now living shall die in my lifetime, then such child or children living at my death of every or any brother or sister of mine so dying as being a male or males

Trusts for five brothers and sisters of testatrix, and the family of a deceased brother by reference to his will.

Substitution of issue.

VIII. WILL OF SPINSTER GIVING BULK OF PROPERTY FOR CHARITABLE PURPOSES.

shall attain the age of twenty-one years, or, being a female or females, shall attain that age or marry, shall take the share of the said trust premises which his, her, or their parent would have taken if living at my death; AND such children, if more than one, shall take the same in equal shares: PROVIDED ALWAYS, that in case there shall be no child of my said deceased brother, who shall attain an absolutely vested interest in the share hereinbefore appropriated to the family of my last-mentioned brother (in which event the said share shall after the failure or determination of the trusts hereinbefore declared of the same be retransferred to my trustees); AND also in case as to any of my brothers or sisters so dying hereafter in my lifetime as aforesaid, there shall be no child, or no child who shall attain an absolutely vested interest in the share which his or her parent would have taken if living at my death, then and in any and every such case the share (as well original as accruing under this proviso) whereof the trusts shall so have failed, or so much thereof as shall not have become vested, or been applied under any of the trusts or powers herein contained, or referred to (and as to the said share of the family of my deceased brother, subject and without prejudice to the interest therein of the said [B. B.] during her life or widowhood) shall go over and accrue by way of addition (equally between them if more than one) to the other shares or share of the said trust premises, so that every such addition to any such share may from the period of accruer be held upon and for the same trusts and purposes as the share to which the same shall be added, and may thenceforth devolve together with such share and be considered as forming part thereof. [*Investment clause, p.* 355. *Trustee clauses, pp.* 624, 625, *Forms* 10 *and* 11.]

Accruer clause.

IN WITNESS, &c.

IX. WILL *of* WIDOW *giving* SPECIFIC *and* PECUNIARY LEGACIES, *and giving the* RESIDUE *of* REAL *and* PERSONAL ESTATE *to two* SONS *as* TENANTS *in* COMMON. IX. RESIDUE TO TENANTS IN COMMON.

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of two sons as executors*, *p.* 472, *Form* 3. *Directions as to funeral*, *p.* 478, *Forms* 1, 2. *Specific bequests*, *pp.* 480 et seq. *Pecuniary legacies*, *pp.* 503 et seq.] I devise and bequeath all the residue of my real and personal estate and effects, whatsoever and wheresoever, unto my said two sons [*names*], their heirs, executors, administrators, and assigns, according to the nature and tenure thereof respectively, for their absolute use and benefit respectively in equal shares as tenants in common. Gift of residue.

IN WITNESS, &c.

X. WILL *disposing of* RESIDUARY ESTATE *in favour of the* TESTATOR'S WIFE *and* CHILDREN.

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of executors*, *p.* 472, *Form* 3; *and guardians*, *p.* 476, *Form* 18 *or* 19. *Specific bequests*, *pp.* 480 et seq. *Gift of furniture*, *&c.*, *to wife*, *p.* 482, *Form* 14. *Immediate pecuniary legacy to wife*, *p.* 503, *Form* 1. *Legacies to executors, to servants, &c.*, *pp.* 504 et seq. *Pecuniary legacies to children, to be invested*, *p.* 513, *Form* 32. *Annuity to testator's mother*, *p.* 525, *Form* 1. *Gift of residue to trustees*, *p.* 553, *Form* 5*b*. *Trust for conversion*, *p.* 555, *Form* 1. *Trusts of proceeds of conversion*, *p.* 556, *Form* 3. *Authority to delay conversion, and declaration as to income*, *p.* 558, *Form* 9. *Trust for investment of residue, with power to vary investments*, *p.* 559, *Form* 13. *Declaration of trusts*, *p.* 559, *Form* 14; *for wife during widowhood, and then for children*, *pp.* 562 et seq. *Advancement clause*, *p.* 585, *Form* 7. *Investment clause*, *p.* 355, *Forms* 16 et seq. *Power to allot property in respect of shares*, *p.* 599, *Form* 35 *or* 36. *Power to appoint new trustees*, *p.* 621, *Form* 1. *Other trustee clauses*, *pp.* 623 et seq., *Forms* 8, 10, 11, 15, 18.]

IN WITNESS, &c.

XI. WILL OF A FARMER.

XI. WILL *of a* FARMER, *directing his* FARMING BUSINESS *to be* CARRIED ON *until his* YOUNGEST CHILD *attains* TWENTY-ONE *or* MARRIES; *the* PROFITS *and* INCOME *in the meantime for the* MAINTENANCE *of his* WIFE *and* CHILDREN; LEGACIES *to* CHILDREN *at* TWENTY-ONE *or* MARRIAGE *with consent; when the* BUSINESS *is discontinued,* LIFE ANNUITY *to* WIDOW *and* RESIDUE *to* CHILDREN. *Full* DISCRETIONARY POWERS; DISCRETIONARY POWER *to convert* REAL ESTATE (*n*).

Commencement.

I, [*testator*], of, &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will.

Appointment of executors and trustees.

1. I APPOINT my wife [*name*], during her widowhood, and [*names*], and also my son [*name*], when he shall attain the age of twenty-one years, executors and trustees of this my will; AND I direct that if my said son [*name*], shall not attain that age till after my death, the trust property shall, on his attaining that age, be transferred so as to be vested in him jointly with the other trustees or trustee for the time being; AND I declare that the expression "my trustees" shall include my said wife and the said [*names*], and my said son if and when he attains the age of twenty-one years, and the survivors and survivor of them, or other the trustees or trustee for the time being of this my will.

Appointment of guardians.

2. I APPOINT my said wife sole guardian of my children during her widowhood, and after her death or marriage my trustees (other than my said son) guardian and guardians of my children, but during the remainder of the life of my said wife, jointly with her (*o*).

3. [*Specific bequests, pp.* 480 et seq.]

Immediate legacy to wife.

4. I GIVE to my said wife the sum of £——, to be paid to her immediately after my death, for present use and for mourning for herself and children.

(*n*) The above precedent embodies in a concise form, and, as far as possible, in untechnical language, a scheme of testamentary disposition, which may be recommended for ordinary use in cases where children are to be provided for without entailing the real estate. The provisions for the testator's wife, and those relating to the real estate, may be omitted, if not required; and the directions for carrying on the farming business may easily be adapted to any other business: see forms of trusts for carrying on a business, *ante,* pp. 496 *et seq.*

(*o*) See, as to this, *ante,* p. 475, note (*q*).

5. I GIVE the sum of £—— to each child of mine who shall survive me and attain the age of twenty-one years or marry with the consent of his or her guardian or guardians.

Legacies to children at twenty-one or marriage with consent;

6. IF ANY of my children shall die before me, I give the sum of £—— unto or equally between or among such child or children of each child of mine so dying before me as shall survive me and attain the age of twenty-one years or marry with the consent of my said wife or, after her death or marriage, of my trustees.

substitution of children of deceased children.

7. MY TRUSTEES may, in their discretion, retain all or any of the legacies hereinbefore bequeathed to my children or their issue, or any part thereof respectively, and employ the same in my farming business for so long a period as my trustees shall think fit, but so that if the payment of any such legacy, or any part thereof, should be delayed beyond the time of vesting, my trustees shall thenceforth pay interest upon such legacy or such part thereof as shall for the time being remain unpaid, at the rate of four per cent. per annum until payment thereof, such interest to be paid quarterly on the usual quarter days.

Power to retain legacies for employment in business.

8. I DEVISE all my freehold closes of land at ——, in the county of —— aforesaid, and all other (if any) my real property, and I bequeath all that my leasehold farmhouse and farm at —— aforesaid, which I hold of [A. B.], Esquire, under a lease dated, &c., for the residue of the term of —— years from the —— day of ——, and all other (if any) the farm or farms which I may occupy as lessee or tenant at the time of my death, unto and to the use of my said wife and the said [*names*], and my said son if of full age at my decease, their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises respectively, upon trust to sell the same, and to hold the proceeds of such sale, upon the trusts hereinafter declared of my residuary personal property; but I authorise my trustees, in their absolute discretion, to postpone such sale; AND I declare that my real property shall, until sale thereof, be held upon trust for the respective persons entitled under my will to my residuary personal estate, and, as nearly as may be, for the like estates and interests, subject to the like powers and in like manner in all respects.

Gift of realty and chattels real in trust for sale.

Realty, &c. until sale, to be held on same trusts as personalty.

9. MY TRUSTEES may let any unsold real or leasehold property (subject as to customary property to any customary restrictions), at the best rent obtainable, without fine or premium, subject to such covenants as they may think fit, for any term not exceeding

Power to let, improve, and manage real estate.

XI. WILL OF A FARMER.

twenty-one years from the time of letting, or for mining, building, repairing, or improving purposes, for any period and on any terms; AND may drain, improve, repair, cut and sell timber on, insure from fire, manage and receive the rents of any unsold real or leasehold property; AND may raise any money for payment of my debts and legacies by mortgaging any part of my real estate, and giving to any mortgagee or mortgagees such powers as my trustees shall think reasonable.

Power to mortgage for payment of debts and legacies.

Actual income to be applicable as income.

10. I DECLARE, that the income actually produced by my real and leasehold property shall be applicable as income under my will; but fines and premiums for building or mining leases shall be dealt with as capital.

Authority to carry on farming business and retain farming stock, &c.;

11. I AUTHORISE and request my trustees while any son of mine is under age, or any daughter of mine is under age and unmarried, or for such shorter period as they shall think fit, to carry on my farming business, and for that purpose to retain unsold all or such parts as they shall think fit of my household furniture, plate, household linen, china, books, and other household effects, motor-cars, carriages, carts, waggons, horses, saddles, harness, and garage and stable furniture and effects, and my dairy utensils, implements of husbandry, crops, and live and dead stock;

discretionary powers;

with full discretionary powers as to insurance, alteration, disposition and increase or diminution of capital or stock, and purchase of stock, employment of bailiffs, servants, and labourers, and their salaries, powers, and authorities, and the extent of personal superintendence to be exercised by my trustees; AND, at the discretion of my trustees, to accept a fresh lease or fresh leases of any leasehold farm or farms I may occupy at my death, or to hire on lease any other farm or farms, on such terms and for such time or times as they may think expedient; AND to take possession of and use in such business any unsold freehold or customary lands and property; AND generally to act in the management of such farming business and to use my real and personal property therein as if they were absolute owners or owner thereof.

power to take new leases of farms.

Residence and furniture for wife and infant and unmarried children.

12. I DIRECT, that the dwelling-house I shall occupy at my death, or such other house as my trustees shall from time to time think fit, together with my household furniture and household effects, or a sufficient part thereof, shall be kept up at the expense of my residuary estate for the residence of my wife during her

widowhood, and of my unmarried children, so long as any one of them is under age [*or*, so long as the said business is continued].

13. I DIRECT, that, while the said business is continued, all or such part as my trustees shall think fit of the profits thereof, and my consumable household stores, and the income from my other property, shall be applied for the maintenance of my wife during her widowhood, and the maintenance and education of my children and the issue of any deceased children, in such proportions as my trustees shall think fit; with power for my trustees to allow my wife to receive such profits and income or any part thereof during her widowhood for that purpose, without seeing to the application thereof: AND I direct, that the unapplied profits (if any) of the said business shall be added to the capital of my residuary estate.

Power to apply all or part of profits for maintenance.

Surplus profits to accumulate.

14. SUBJECT TO the foregoing trusts, directions, and powers, my personal estate shall be sold, got in, and converted into money; AND, after payment (subject as is hereinafter provided) of all expenses of and incident to such sale and conversion, and of my debts, funeral and testamentary expenses, and legacies and the death duties on all legacies given by my will or any codicil hereto, the clear surplus of the proceeds of my personal estate, and of such real and leasehold property as shall be sold, shall be invested by my trustees as hereinafter mentioned; the unapplied income thereof to be accumulated and added to the capital until the same is distributed, which distribution is not to take place until the discontinuance of my farming business.

Direction to get in and invest residue of personalty

15. IF THE said business shall be discontinued during my wife's widowhood, my trustees shall set apart so much of my residuary real and personal property, or the investments thereof producing permanent income, as shall be sufficient to produce the clear yearly sum of £——, and I give the income from such fund to my wife during her widowhood; AND, in case she shall marry again, I direct that thereupon the fund so set apart shall be reduced so as to produce the clear yearly sum of £—— only, in which event, I give the yearly income of such reduced fund to my wife during the remainder of her life; AND if my wife shall marry before the said business is discontinued, I direct the said yearly sum of £—— to be paid to her from the time of her marriage out of the income of my residuary estate until a fund is appropriated for the same. PROVIDED, that if either of the said appropriated funds should afterwards yield less than the before stated income, the

When residue is distributed, fund to be set apart for annuity for wife;

reducible on her marriage;

XI. WILL OF A FARMER.

deficiency shall be made up out of the capital; AND that such yearly sums given to my wife shall be made good up to the time of her marriage or death respectively by apportionment.

Residue to children [as wife shall by will appoint;

16. SUBJECT TO the foregoing provision for my wife, and as to the residue of my personal estate and effects (including the capital of the said appropriated funds after the determination of my wife's interest therein respectively), I give the same [unto such child or children or other issue of mine, for such interests, and in such shares and manner as my wife, whether married or sole, shall by will appoint, so that every appointed interest shall vest before the end of twenty-one years from the death of the survivor of my wife and children; AND subject to any such appointment] unto such child or children of mine living at my death, and such child or children then living of any child or children of mine then dead as shall attain the age of twenty-one years or marry with such consent as aforesaid, and if more than one in equal shares, as between or among brothers and sisters; but so that the child or the children collectively of any deceased child of mine shall take only the share which such deceased child would have taken if living (*p*).

in default] to children at twenty-one or on marriage with consent;

advancements to be allowed for.

But I direct, that any moneys which in my lifetime I may have advanced to or for the benefit of any child of mine shall be allowed for as part of the share of such child or of such child's issue; [AND that no child or grandchild, to whom or to whose issue any appointment shall be made, shall take any benefit under the foregoing gift in default of appointment, without bringing the same into hotchpot or allowing for the benefit of such appointment].

Hotchpot.

Variation giving wife an equal share in residue with children in lieu of a life income.

(*p*) Or omit the gift of a life income to the wife, and give her a share of the residue—

"I give the residue of my personal estates and effects unto my said wife, if she survive me, and such child or children of mine living at my death, and such child or children then living of any child or children of mine then dead as shall attain the age of twenty-one years, or marry with such consent as aforesaid, in equal shares as between or among brothers and sisters, and so that my wife shall take an equal share with any one of her children, but so that the child or the children collectively of a deceased child shall take only the share which such deceased child would have taken if living."

17. My trustees may [with the consent of my said wife during her life] raise and apply for the advancement in life or benefit of any minor not more than one half of his or her presumptive or vested legacy or share. Advancement.

18. My trustees may sell my farming business, and any property employed therein, to any son of mine, at a valuation, and take his bond or other security for payment of all or part of the purchase-money within —— years, with interest at the rate of —— per cent. per annum till payment; And may invest any trust moneys in or upon any of the stocks, funds, shares, or securities hereby authorised, and may vary any investments of trust moneys. Power to sell to son at a valuation; to invest and change investments.

19. [*Investment clauses*, ante, *pp.* 355 et seq.]

20. My trustees may, in their discretion, apportion and allot my real and personal estates, or any parts thereof, among and to the persons entitled thereto, or any of them; And, if my trustees think fit, for equality of partition, may sell or mortgage the same or any part thereof, or charge any sum or sums or any part or parts. Power to apportion realty and personalty among *cestuis que trust*.

21. The power of appointing new trustees of this my will shall be exerciseable by my said wife during her widowhood, and after her death or remarriage by such of my children as shall for the time being have attained the age of twenty-one years. Power to appoint new trustees.

22. Any trustee, being a solicitor, or auctioneer or appraiser, or other professional person, may give advice and transact business in relation to the trusts, and charge for the same as if he were not a trustee. Power for trustees to charge for professional services.

In witness, &c.

XII. WILL *of a* Trader, *a* Married Man. Directions *for* Carrying *on* Trade.

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of wife and other executors and trustees*, *p.* 472, *Form* 4. *Appointment of guardians*, *p.* 475, *Form* 18. *Specific bequests*, *pp.* 480 et seq. *Use of house and furniture, &c. to wife for life*, *p.* 484, *Form* 22. *Power for trustees to carry on business, with option to testator's sons successively to take it over*, *p.* 497, *Forms* 4 *and* 5. *Pecuniary legacies*, *pp.* 503 et seq. *Gift of residue to trustees*, *p.* 553, *Form* 5*b*. *Trust for sale and conversion of residue*, *p.* 555, *Forms* 1 *and* 2. *Trust of proceeds to pay debts, &c.*,

XII. DIRECTIONS FOR CARRYING ON TRADE.

p. 556, *Form* 3. *Trust for investment of residue, with power to vary investments, p.* 559, *Form* 13. *Declaration of trusts of residue, p.* 559, *Form* 14. *Trusts of residue for wife for life for maintenance of herself and children, and then for children, with settlement of shares of daughters, pp.* 564 et seq., *Form* 3.] PROVIDED ALWAYS, and I hereby declare, that the trust or obligation hereinbefore imposed on my said wife to apply a portion of the gains and profits of trade, or other annual income, for the support and maintenance of my children for the time being, shall not implicate my trustees in any responsibility respecting the application thereof, nor shall the same extend to any son or sons of mine after he or they respectively shall have attained the age of twenty-one years or shall have married, or to any daughter of mine after she shall have married, nor for any longer period than she shall be willing to reside with my said wife, it being my intention merely to provide my daughters with a home, and not to support a separate establishment for them. [*Advancement, p.* 585, *Form* 7. *Investment clauses, pp.* 355 et seq. *Power to appoint new trustees, p.* 651, *Clause* 21; *and other trustee clauses, pp.* 623 et seq., *Forms* 8, 10, 11, 15 *and* 18.]

Proviso, explanatory of trust for maintenance.

IN WITNESS, &c.

XIII. WILL *of a* PARTNER. BEQUEST *of* SHARE *in* BUSINESS *to* TRUSTEES, *upon trust to* REALISE *the same, with* POWERS *to settle* ACCOUNTS, *and to leave* CAPITAL *of* SHARE *in* BUSINESS *on* LOAN; PROCEEDS *of* REALISATION *to be as* RESIDUARY ESTATE. USUAL TRUSTS *of* RESIDUE *for* BENEFIT *of* WIFE *and* CHILDREN.

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of two sons,* [A. B.] and [B. B.], *executors and trustees, p.* 472, *Form* 3. *Specific bequests, p.* 480.] AND WHEREAS I am a partner in the partnership or firm of ——, carrying on the business of ——, in ——, in the county of ——, under certain partnership articles dated the —— day of ——, [*recite any provision in the articles for winding-up the business after the death of a partner*]: Now I hereby bequeath all my share and interest in the said partnership business and in the real and personal property, assets, capital, stock-in-trade, goodwill, and all trade marks or other rights in connection with such goodwill, credits, profits, and other the

Bequest of share in partnership to sons.

XIII. WILL OF A PARTNER WHOSE SHARE IS TO BE REALISED.

effects of the said partnership, and all arrears, profits, and other moneys owing to me by the said firm unto the said [A. B.] and [B. B.], their heirs, executors, administrators, and assigns, upon trust, that my trustees shall concur with the other persons or person for the time being interested in winding-up the said partnership business, or any other business in which I may be engaged as a partner at the time of my death; AND for that purpose I authorise my trustees to adjust and settle, &c. [*continue as at p.* 502, *Form* 11]: My trustees shall stand possessed of all arrears of gains and profits which shall, upon such adjustment and settlement of accounts as aforesaid, be found to be due to my estate, and also of all moneys to arise from the winding-up and realisation of my share in the said business, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the proceeds of sale and conversion of my residuary estate, and shall pay and apply all the net gains and profits which shall arise in respect of my share in the said partnership business from and after my death, and during any such postponement of the winding-up of the said business and ascertainment and disposal of my share therein, as if the same were income arising from investments of my said residuary estate. [*Gift of residue to trustees, p.* 553, *Form* 5*b*. *Trust for sale and conversion, p.* 555, *Forms* 1 *& 2*. *Trust of proceeds of sale, &c., p.* 556, *Form* 3. *Trust for investment of residue, with power to vary investments, p.* 559, *Form* 13. *Declaration of trusts of invested residue, p.* 559, *Form* 14. *Trusts for wife during widowhood, then for children, &c., pp.* 562 et seq., *Form* 1. *Investment clauses, pp.* 355 et seq. *Power to appoint new trustees, p.* 651, *Clause* 21. *Trustee clauses, pp.* 623 et seq., *Forms* 8, 10, 11, 15 *and* 18.]

Upon trust to realise.

Arrears of profits and proceeds of realisation to go as residuary personalty.

IN WITNESS, &c.

XIV. WILL *bequeathing* SPECIFIC *and* PECUNIARY LEGACIES. RESIDUE *for* CONVERSION. INCOME *of* RESIDUE *to* WIFE *during* WIDOWHOOD. RESIDUE *for* CHILDREN: SONS' SHARES *to vest at* TWENTY-FIVE. SETTLEMENT *of* DAUGHTERS' SHARES. VARIATION *by which the* VESTING *of* GRANDSONS' SHARES *is postponed until* TWENTY-FIVE. PROVISION *for* ILLEGITIMATE CHILD.

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 472, *Form* 3; *and guardians, p.* 475, *Form* 18.

XIV. ORDINARY WILL OF REALTY AND PERSONALTY.

Furniture of a certain value to wife, p. 483, *Form* 18. *Immediate legacy to wife, p.* 503, *Form* 1. *Legacies to children, including a natural daughter: investment and maintenance; substitution of issue of deceased children, p.* 513, *Form* 32.] And whereas I have contracted with [*vendor*], of, &c., for the purchase of certain freehold messuages and hereditaments at ——; Now I hereby authorise my trustees either to complete such purchase or relinquish the same, as circumstances, &c. [*continue as at p.* 593, *Form* 24. *Realty and personalty to trustees, p.* 553, *Form* 5*b*. *Trusts for conversion and investment, &c., pp.* 555, *Forms* 1 *and* 2; 556, *Form* 3; 559, *Form* 13. *Trusts of residue, to pay income of one moiety to wife during widowhood; and subject thereto in trust for children, sons at twenty-five, daughters at twenty-one or marriage; daughters' shares to be settled on them and their issue, p.* 566, *Form* 4. *Maintenance, p.* 582, *Form* 1. *Power to postpone payment of legacies, p.* 523, *Form* 47. *Investment clauses*, ante, *pp.* 355 et seq. *Power to appoint new trustees, p.* 651, *Clause* 21. *Trustee clauses, pp.* 623 et seq., *Forms* 8, 10, 11, 15 *and* 18.]

In witness, &c.

XV. WILL *giving* Real *and* Personal Estate *in trust for* Sale, *the* Produce *to be invested for the* Wife *and* Children. Life Interest *in one* Moiety *to the* Wife. Capital *to* Children *in* Unequal Shares. Daughters' Shares Settled, *with* Cross Limitations. Life Annuities *to* Testator's Niece *determinable on* Alienation, *and then to her children.*

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 472; *and guardians, p.* 475, *Form* 18. *Furniture to wife, p.* 482, *Form* 14, *or p.* 483, *Form* 18. *Other specific legacies, pp.* 483 et seq. *Pecuniary legacies to wife, p.* 503, *Form* 1; *and to trustees, &c., Form* 3; *other pecuniary legacies, pp.* 503 et seq. *Annuities to two sisters and a niece with proviso for cesser on alienation, p.* 528, *Form* 6. *Gift of residue to trustees, p.* 553, *Form* 5*b*. *Trust for sale and conversion, p.* 555, *Forms* 1 *and* 2. *Trusts of proceeds of sale and conversion, p.* 556, *Form* 3. *Trusts for investment of residue, with power to vary investments, p.* 559, *Form* 13. *Declaration of trusts of residue,*

p. 559, *Form* 14. *Income of one moiety to wife during widowhood; subject thereto, the entirety for children, sons at twenty-five, daughters at twenty-one or marriage; sons' shares double those of daughters; share of each daughter to be in trust for her inalienable use for life, and then for her children; accruer; power to daughters to bequeath life interests to husbands, &c.; substitution of issue of children dying before the vesting age; on failure of children, the remaining moiety to wife for life, and, subject thereto, to testator's niece for her life, and then to her children, pp.* 566 et seq., *Form* 4. *Power to invest trust moneys in purchase of lands, p.* 559, *Form* 15. *Power to lease land, pp.* 590 et seq. *Investment clauses, pp.* 355 et seq. *Power to appoint new trustees, p.* 651, *Clause* 21. *Trustee clauses, pp.* 623 et seq., *Forms* 8, 10, 11, 15 *and* 18.]

XV. PRODUCE OF REAL AND PERSONAL ESTATES FOR WIFE AND CHILDREN.

In witness, &c.

XVI. WILL *of a* Widower, *devising* Specific Freehold *and* Copyhold Estates *to each of his* Three Daughters *respectively for* Life, *with* Power *to appoint* Life Estates *to their surviving* Husbands, *and a* Power *of* Selection *among their respective* Children *or more remote* Issue. *In default of* Appointment, *the* Estates *devised to each* Daughter *to go to her* Children *as* Tenants *in* Common *in* Fee. Cross-executory Limitations *between the several* Families. *The* Residue *of the* Testator's Real *and* Personal Estates *to form* One Fund, *to be held upon* Trusts *similar to the* Uses *and* Trusts *limited of the* Real Estates *specifically devised, in such manner as to* Compensate *for any* Inequalities *in the* Values *of the* Estates *specifically devised.* Power *of* Advancement *out of the* Real *and* Personal Estates.

[*COMMENCEMENT, p.* 470. *Appointment of executors and trustees, p.* 472, *Form* 3. *Appointment of guardians with power to substitute, p.* 476, *Form* 21. *Directions as to funeral, p.* 478, *Forms* 1, 2. *Specific bequests, pp.* 480 et seq. *Legacy to trustees, p.* 504, *Form* 3; *and other pecuniary legacies, pp.* 504 et seq.] I give and devise all my freehold and copyhold hereditaments at Thorpe, in the county of ——, and my freehold land at Redham, in the same county, purchased of John Wood, with the four

Devise of certain hereditaments to eldest daughter for life.

XVI. SPECIFIC DEVISES: TENANTS FOR LIFE TO REPAIR AND INSURE.

cottages thereon, unto and to the use of my daughter [*eldest daughter*], during her life, but so that during [her present or any future coverture] the same shall be without power of anticipation. AND, after her death, to such uses and upon such trusts, for the benefit of any surviving husband of my said daughter, as to all or any part of the said hereditaments and for any period not exceeding the term of his life, as my said daughter shall, by will, notwithstanding coverture or (being unmarried) by deed, appoint. AND, subject thereto, to such uses and upon such trusts for the benefit of all or any of my said daughter's children or more remote issue (born in her lifetime), as she shall at any time or times by deed, revocable or irrevocable, or by will appoint, but so that no infant and unmarried child or other issue shall take a vested interest under any such appointment in the lifetime of my said daughter. AND, subject thereto, to the use of such child or children of my said daughter as shall be living at my death, and such child or children of any child or children of my said daughter who shall be then dead as shall survive me, and if more than one, in equal shares as between or among brothers and sisters, and his, her, or their heirs and assigns for ever, but so that the child or the children of a deceased child shall take in equal shares between them only the share which such deceased child would have taken if living. But in case any of such children or grandchildren should die under the age of twenty-one years without leaving issue, then I give and devise his, her, or their share or shares (as well under this substitutionary limitation as under the foregoing original limitation), to the uses herein limited concerning the other share or shares of the said hereditaments: PROVIDED that no child or grandchild shall take under the foregoing limitation in default of appointment, without bringing into hotchpot or allowing for the benefit of any appointment which shall have been made to him or her or to his or her issue. AND if no child or grandchild of my said daughter should be living after my decease, and attain the age of twenty-one years or die under that age leaving issue, then, subject to any such appointment as aforesaid, as to one moiety of the said hereditaments, to and upon the uses and trusts, and with the powers hereinafter limited and contained concerning my hereditaments at Easton, purchased of James Watt; AND as to the other moiety thereof, to and upon the uses and trusts, and with the powers hereinafter limited and contained concerning my hereditaments at Easton, purchased of John Hutton. AND I give

power to appoint life-interest to husband;

power to appoint the fee among her issue;

in default of appointment to children and issue of deceased children, with cross-limitations of shares of children dying under twenty-one without issue;

in default of such issue to similar uses in favour of other daughters, their husbands, and issue, by reference.

Devise of

and devise all my copyhold hereditaments at Easton, in the said county of ——, which I purchased of James Watt, and to which my daughter [*second daughter*], the wife of [*name*], has been admitted in trust for me, and all my copyhold hereditaments at Redham aforesaid, which I purchased of Charles Reed, with the cottages erected thereon, to and upon such or the like uses and trusts, and with such or the like powers in favour of my said daughter [*second daughter*], her surviving husband, and her issue, as are hereinbefore limited, expressed, and contained as to my said hereditaments at Thorpe, in favour of the said [*eldest daughter*], her surviving husband, and her issue; AND, subject thereto, as to one moiety of the hereditaments lastly hereinbefore devised, to and upon the uses and trusts, and with the powers hereinbefore limited and contained concerning my hereditaments at Thorpe; AND as to the other moiety thereof, to and upon the uses and trusts, and with the powers hereinafter limited and contained concerning my hereditaments at Easton aforesaid, purchased of James Hutton. AND I give and devise all my freehold and copyhold hereditaments at Easton aforesaid, which I purchased of James Hutton, to and upon such or the like uses and trusts, and with such or the like powers in favour of my daughter [*third daughter*], her surviving husband, and her issue, as are hereinbefore limited, expressed, and contained as to my said hereditaments at Thorpe, in favour of the said [*eldest daughter*], her surviving husband, and her issue; AND, subject thereto, as to one moiety of the hereditaments lastly hereinbefore devised, to and upon the uses and trusts, and with the powers hereinbefore limited and contained concerning my hereditaments at Thorpe; AND as to the other moiety thereof, to and upon the uses and trusts, and with the powers hereinbefore limited and contained concerning my hereditaments at Easton, purchased of James Watt. AND I direct that each tenant for life, or for any less estate, of any hereditaments, shall, during her or his estate, keep the buildings thereon in good and substantial repair and insured in the names of my trustees, in some respectable office or offices of insurance against damage by fire, to the full value thereof; AND that the moneys to be received under every such insurance shall be applied in reinstating the property in respect whereof the same shall become payable; AND that, if any such person should neglect to effect such repairs as aforesaid within six calendar months after

another estate to similar uses in favour of second daughter, her husband, and issue;

on failure of such uses, to similar uses in favour of other two daughters, their husbands, and issue.

Devise of a third estate to similar uses in favour of third daughter, her husband, and issue;

on failure of such uses, to similar uses in favour of other daughters, their husbands, and issue.

Tenants for life to repair and insure;

on their default, trustees

XVI. SPECIFIC DEVISES: TENANTS FOR LIFE TO REPAIR AND INSURE.

being thereunto requested in writing by my trustees, or to effect or keep on foot such insurance, or to produce to my trustees, upon demand, the receipt for each premium thereon within fourteen days after the same shall have first become payable, it shall be lawful for (but not incumbent on) my trustees, out of any trust moneys in their hands, to effect such repairs or to effect or keep on foot such insurance, and to deduct the expenses thereof, with interest thereon after the rate of 5 per centum per annum, from any moneys which shall then or afterwards be payable to such person, or to recover such expenses and interest, with all costs incidental to the recovery thereof, by entry upon and perception of the rents and profits of any hereditaments to which such person shall be entitled for any estate or interest, either by original limitation or by appointment under my will.

may repair and insure, and recover costs by distress and entry.

Gift of residuary real and personal estate to trustees.

I devise and bequeath all the residue of my real estate and chattels real, and of my personal estate and effects whatsoever and wheresoever, unto and to the use of the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises respectively, upon trust thereout, or by means thereof, to pay and satisfy my funeral and testamentary expenses and the legacies given by this my will, or any codicil hereto, and the duties on any legacies given free of duty, and subject thereto, to hold the same subject to the directions and upon the trusts hereinafter declared and contained concerning the same.

Trustees to cause estates specifically devised to be valued.

My trustees shall, as soon as conveniently may be after my death, cause the several freehold and copyhold hereditaments hereinbefore specifically devised, and also my said residuary real and personal estate (subject as aforesaid), to be respectively valued by some competent person or persons, to be appointed for that purpose by my trustees.

Gift of residuary realty and personalty, for benefit of daughters and their husbands and issue, by reference, in such proportions as to make all their shares

And my trustees shall set apart such a portion of my said residuary real and personal estates as shall, together with the value (so to be ascertained as aforesaid) of my said hereditaments hereinbefore specifically devised for the benefit, in the first instance, of my said daughter [*eldest daughter*], be equal in amount or value to one equal third part of the total value (so to be ascertained as aforesaid) of all my specifically devised hereditaments and my said residuary real and personal estates taken together; And shall be possessed of such part or portion, upon

trusts, and subject to powers corresponding as nearly as may be with the uses, trusts, and powers hereinbefore limited and contained concerning my said hereditaments at Thorpe; And shall set apart such other portion of my said residuary real and personal estates as shall, together with the value (so to be ascertained as aforesaid) of my hereditaments hereinbefore specifically devised for the benefit, in the first instance, of my said daughter [*second daughter*], be equal in amount or value to such equal third part as aforesaid; And shall be possessed of such other portion, upon trusts, and subject to powers corresponding as nearly as may be with the uses, trusts, and powers hereinbefore limited and contained concerning my said hereditaments at Easton, purchased of James Watt; And shall be possessed of the remaining portion of my said residuary real and personal estate, upon trusts, and subject to powers corresponding as nearly as may be with the uses, trusts, and powers hereinbefore limited and contained concerning my said hereditaments at Easton, purchased of John Hutton. [*Maintenance clause, if desired, pp.* 582 et seq. *Advancement clause, p.* 585, *Form* 7. *Appointment of trustees to be trustees of settlement for purposes of Settled Land Acts, and for purposes of sect.* 42 *of Conveyancing Act,* 1881, *p.* 615, *Form* 29. *Provisions extending statutory powers and provisions of Settled Land Acts, pp.* 615 et seq. *Trustee clauses, pp.* 624 et seq.]

XVI. SPECIFIC DEVISES: TENANTS FOR LIFE TO REPAIR AND INSURE.

under the will of equal value.

In witness, &c.

XVII. STRICT SETTLEMENT *of* Two Estates *on* Testator's Two Daughters *respectively and their* Issue, *with* Cross-remainders, *and ultimate* Remainder *to a* Niece *and her* Issue. Term *for* raising Money *for* Debts *and* Legacies. Shifting Limitations. Heirlooms.

[*COMMENCEMENT, p.* 470, *Form* 1.] I devise all that my manor or lordship of ——, and all other the manors or reputed manors, messuages, farms, lands, tenements, and hereditaments whatsoever in the county of York, of or to which I or any person or persons, in trust for me, am, is, or are seised or entitled for any estate of freehold or inheritance in possession, reversion, remainder, or expectancy, or otherwise howsoever or which I have power to dispose of or appoint by my will (hereinafter called my Yorkshire

Devise of testator's estates in the county of York.

XVII. STRICT SETTLEMENT: SHIFTING CLAUSES.

estates), with their appurtenances and all my estate and interest therein, to the uses following (that is to say), to the use of [*trustees of term*], &c. [*Continue as at p. 602, Form 5. And subject to the term so created, to elder daughter for life; remainder to her sons successively in tail male; remainder to her sons in tail general; remainder to her daughters in tail male; remainder to her daughters in tail general; remainder to younger daughter and her issue in strict settlement, with corresponding limitations to those for elder daughter; remainder to testator's own heirs, p. 608, Form 15.*] The term of —— years hereinbefore limited to the said [*trustees of term*], their executors, administrators, and assigns, is so limited to them, upon trust that they the said [*trustees of term*], or the survivor of them, or other the trustees or trustee for the time being of the said term of —— years, shall as soon as conveniently may be after my death, by demising, assigning, mortgaging, selling, or otherwise disposing of the said manors and other hereditaments comprised in the said term of —— years, or any of them or any part thereof, for the whole or any part of the same term, or out of the rents and profits of the same hereditaments or any of them, or by any other means raise any such sum or sums of money as the trustees or trustee of such term shall, in their or his discretion, think fit for the payment of my funeral and testamentary expenses and debts, and the legacies given by this my will or any codicil hereto, and shall pay or apply such moneys in or towards the payment or satisfaction and discharge of my said funeral and testamentary expenses, debts, and legacies.

Trusts of term for raising money for payment of debts and legacies (*q*).

[*Devise of estates in Lincolnshire similar to devise of Yorkshire estates,* mutatis mutandis; *limitations to younger daughter and her issue in strict settlement; remainder to elder daughter and her issue in strict settlement,* ut ante, *p.* 608, *Form* 15, mutatis mutandis, *adding before ultimate remainder to testator's heirs limitations to testator's niece by name and her issue in strict settlement.*]

Devise of Lincolnshire estates.

It shall be lawful for each and every or any of my said daughters and niece respectively, either before or after she shall become actually entitled to the possession or receipt of the rents and profits of the estates hereby settled or either of them. [*Continue as at p. 614, Form 24, saying:* "to be issuing out of or charged upon

Power to daughters and niece to appoint rent-charges to husbands for life.

(*q*) See also power to raise money for these purposes by mortgage of the fee, *ante,* p. 598, Form 33.

all or any part of such estates respectively." *Clause reducing estates in tail male and in tail of persons born in testator's lifetime to estates for life; reduction not to apply to children* en ventre sa mère, *p.* 605, *Form* 12.]

Power to such persons to limit rentcharges to husband or wife.

I declare that any and every such tenant for life, being a female, shall have the same or the like power of limiting or appointing one or more yearly rentcharge or rentcharges unto or in favour of any husband surviving her as is or are hereinbefore reserved to my daughters and niece respectively: And I further declare that it shall be lawful for any and every such tenant for life, if a male, either before or after he shall become entitled to the actual possession or to the actual receipt of the rents and profits of the same hereditaments, but subject and without prejudice [*continue as at p.* 613, *Form* 23].

PROVIDED ALWAYS, that neither my Yorkshire estates nor my Lincolnshire estates, nor any part thereof respectively, shall by virtue of the respective powers hereinbefore contained [*continue clause limiting amount of rentcharges, p.* 614, *Form* 26].

Proviso shifting Lincolnshire estate in case of its becoming united with the Yorkshire estate in a child of the younger daughter.

[*Direction to devisees to assume testator's name and arms, p.* 610, *Form* 21]: PROVIDED ALSO, and I further declare, that if by reason of the failure of issue of the said [*elder daughter*] entitled or inheritable under the limitations hereinbefore contained, any child of the said [*younger daughter*] or any issue of any such child should for the time being, under the limitations hereinbefore contained, of the said manors and other hereditaments in the said county of York, be tenant in tail male or in tail general in possession of the same manors and other hereditaments, and should at the same time, under the limitations hereinbefore contained, of the said manors and other hereditaments in the said county of Lincoln, be tenant in tail male or in tail general in possession of the said last mentioned manors and other hereditaments, and there should then be living any other child of the said [*younger daughter*] or any issue of any such other child, then and so often as the same shall happen, the estate in tail male or in tail general in possession, which the person so in possession under the limitations hereinbefore contained shall be seised of or entitled to, of or in the said manors and other hereditaments in the said county of Lincoln, and also any estate in tail general to which, under the limitations aforesaid, any such person may happen to be entitled in the same manors and other hereditaments in remainder immediately expectant on his or her estate

XVII. STRICT SETTLEMENT: SHIFTING CLAUSES.

in tail male in possession therein, shall cease and determine; But I declare that if, by virtue of this proviso, my said estates in the said county of Lincoln should have shifted from any child of the said [*younger daughter*] or any issue of any such child, and there should afterwards be a failure of issue of the other child or of all the other children (if more than one) of the said [*younger daughter*], then and in that case my said estates in the said county of Lincoln shall return, be, and remain to such child, from whom or from whose issue the same shall have so shifted in tail male with remainder to such child in tail general, with such remainders over as are hereinbefore limited, expressed, or contained of or concerning the same [*Proviso shifting the Yorkshire estate, in the event of its becoming united with the Lincolnshire estate in a child of the elder daughter. Repeat preceding form, substituting* "younger" *daughter for* "elder" *daughter and* vice versâ, *and substituting* "Lincoln" *for* "York" *and* vice versâ].

[*Furniture, &c., as heirlooms, p.* 620, *Form* 34.]

I devise and bequeath all the residue of my real and personal estate whatsoever and wheresoever unto and between my daughters in equal shares absolutely as tenants in common.

[*Appointment of executors and trustees, p.* 472, *Form* 3. *Appointment of trustees of will to be trustees for purposes of Settled Land Acts and sect.* 42 *of Conveyancing Act*, 1881, *p.* 615, *Form* 29; *with provisoes extending the powers given by the Settled Land Acts, pp.* 615 et seq. *Trustee clauses, pp.* 621 et seq.]

In witness, &c.

XVIII. WILL *of* Realty *and* Personalty. Town House *for* Wife's Residence. Realty *to* Sons *successively in* Strict Settlement; *in default of such* Issue *to be* sold *for* Benefit *of* Daughters. Heirlooms. Legacies *to* Children *and their* Issue. Residue *of* Personalty *for* Wife, *and then for* Issue *as she shall appoint; in default,* Equally. Power *to* settle part *of* Daughter's Legacies.

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 472, *Form* 3; *and guardians, p.* 475, *Form* 18. *Immediate legacy to wife, p.* 503, *Form* 1. *Furniture, &c.*,

"*other than the chattels hereinafter bequeathed as heirlooms*" *to wife during widowhood, p.* 484, *Form* 22. *Bequest of leasehold house in trust for wife's residence; subject thereto, to be sold, p.* 539, *Form* 4. *General devise of freeholds to the uses following, p.* 601, *Form* 1.] To the use of my eldest son, [*name*], and his assigns, during his life, without impeachment of waste; with remainder to the use of the first and every other son of my said son, [*name*], successively, and in remainder one after another in tail male; with remainder to the use of each of my other sons during his life, without impeachment of waste; with remainder to the use of the first and every son successively of each such other son, in remainder one after another in tail male, so that the elder of my said other sons, and his first and other sons, and the heirs male of their respective bodies successively, may be preferred to and take before the younger of my said other sons, and his and their first and other sons, and the heirs male of their respective bodies; AND after the determination or failure of the several estates hereinbefore limited as aforesaid, to the use of the said [*trustees*], their heirs and assigns, upon trust that my trustees shall, as soon as conveniently may be thereafter, sell the said real estates hereinbefore devised.

Real estate for first and other sons and their issue in strict settlement.

Devise, in default of such issue, to trustees for sale;

My trustees shall stand possessed of the net proceeds of such sale, upon trust to pay or divide the same unto or among such of my daughters as shall be living at the time of my death and at the death of the survivor of my said sons, and such failure of issue male of their respective bodies as aforesaid, if more than one in equal shares; AND if any of my daughters should die before the death of the survivor of my said sons and such failure of issue male of their respective bodies as aforesaid (whether in my lifetime or after my death), leaving one or more child or children living at her death, and who shall be living at the death of the survivor of my said sons and such failure of issue male as aforesaid (*r*), and shall attain the age of twenty-one years, then I direct that such child or children of every such daughter shall be entitled to such share of the said trust moneys as his, her, or their deceased parent

Proceeds of sale to be divided among testator's daughters, &c.

Substitution of issue of deceased daughters.

(*r*) This bequest, although not to take effect until after an indefinite failure of issue, is valid; the persons, the failure of whose issue is to entitle the legatees, being devisees in tail. The gift, therefore, notwithstanding its remoteness, does not transgress the rule against perpetuities: *Heasman* v. *Pearce*, L. R. 11 Eq. 522; 7 Ch. 275.

XVIII. REALTY AND PERSONALTY: WIFE AND CHILDREN.

would have been entitled to if living at the death of the survivor of my said sons and such failure of issue male as aforesaid, and that such share shall be divided between or among such children if more than one in equal shares. [*Chattels as heirlooms, p.* 620, *Form* 34. *Legacy to trustees upon trust to invest and hold investments upon trust for inalienable use of married daughter for life, after her death for her issue as she shall appoint, and in default of appointment for her children and children of her sons dying under twenty-one equally; hotchpot clause; in default of issue, as daughter shall generally appoint, in default of appointment for daughter's next of kin; power to advance portions, pp.* 532 et seq., *Form* 2 (*or substitute for daughter's general power and trust to next of kin the following:* Upon trust to pay, apply, and transfer the said settled legacy fund in such manner and to and for such trusts and purposes as are herein declared with respect to the residue of my personal estate): *Legacy among testator's other children; nomination in equal shares; substitution of issue of children dying before testator; clause of accruer as to shares of children dying in testator's lifetime or under age, pp.* 515 et seq., *Form* 33. *Advancement clause, p.* 585, *Form* 7. *Power to trustees to settle shares of daughters marrying under age, p.* 597, *Form* 32. *Residue of personalty to trustees, p.* 553, *Form* 5*b*. *Trust for conversion, p.* 555, *Form* 1. *Trust of proceeds, p.* 556, *Form* 3. *Trust for investment, with power to vary investments, p.* 559, *Form* 13. *Declaration of trusts of invested residue,* ibid., *Form* 14. *Trusts for wife for life, then for children or issue as she appoints; in default for children equally, p.* 564, *Form* 2.] AND if there shall be no child of mine who shall acquire a vested interest in the said residuary trust fund under the trust in default of appointment hereinbefore contained, my trustees shall stand possessed of the said residuary trust fund, upon trust [*continue as at p.* 561, *Form* 1. *Appointment of trustees of will to be trustees for purposes of Settled Land Acts and sect.* 42 *of Conveyancing Act,* 1881, *p.* 615, *Form* 29. *Investment clause, pp.* 355 et seq. *Trustee clauses, pp.* 621 et seq.]

IN WITNESS, &c.

XIX. REAL ESTATE *in* STRICT SETTLEMENT. USUAL CLAUSES. RESIDUE *to* CHILDREN *generally*. XIX. STRICT SETTLEMENT.

[*COMMENCEMENT. p.* 470, *Form* 1. *Appointment of executors, p.* 472, *Form* 3. *Devise of realty to uses declared, p.* 601, *Form* 1. *To use of first and other sons and their issue male in strict settlement; remainder to daughters concurrently and their issue male in strict settlement, with cross remainders; remainder to testator's children concurrently in tail general, with cross remainders, p.* 607, *Form* 14. *Tenants in tail born in testator's lifetime made tenants for life, p.* 605, *Form* 12. *Powers to charge jointures and portions, p.* 613, *Form* 23. *Legacies to unmarried daughters, p.* 536, *Form* 5. *Legacies to younger sons, p.* 513, *Form* 30. *Residuary personalty to children, p.* 553, *Form* 7. *Appointment of trustees of settlement for purposes of Settled Land Acts, and sect.* 42 *of the Conveyancing Act,* 1881, *p.* 615, *Form* 29. *Extension of powers and provisions of Settled Land Acts, pp.* 615 et seq. *Trustee clauses, pp.* 621 et seq.]

IN WITNESS, &c.

XX. WILL *of a* LANDED PROPRIETOR. BEQUEST *of* RENEWABLE LEASEHOLDS *with* PROVISIONS *for* RENEWAL. ACCUMULATION *of* RENTS. FREEHOLDS *and* COPYHOLDS *in* STRICT SETTLEMENT. RESIDUARY PERSONALTY *for* YOUNGER CHILDREN.

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 472, *Form* 3. *Of guardians, p.* 475, *Form* 18. *Specific legacies, pp.* 480 et seq. *Pecuniary legacies, pp.* 503 et seq. *Bequest of renewable leaseholds to trustees upon trusts to renew, &c.; in trust for son at twenty-one; if no son, for daughter; if no daughter, for wife; accumulation of rents during minority, p.* 540, *Form* 5. *Devise of freeholds, p.* 601, *Form* 1. *And subject to rentcharge, to wife, p.* 602, *Form* 4; *in strict settlement, p.* 606, *Form* 13. *Jointuring, and other powers, p.* 613, *Form* 23, *and p.* 614, *Form* 24. *Devise of copyholds to uses of freeholds, p.* 619, *Form* 32. *Wife to give up interest under marriage settlement, p.* 628, *Form* 3. *Residuary bequest of personalty to trustees, p.* 553, *Form* 5*b*; *in trust for conversion, &c., pp.* 555, 556, *Forms* 1 *and* 3; *and invest-*

XX. STRICT SETTLEMENT: RENEWABLE LEASEHOLDS: ACCUMULATIONS.

ment, with power to vary investments, p. 559, Form 13. Declaration of trusts, ibid., *Form 14. Trusts of residuary personalty for all children except eldest son or child taking the real estates, p. 574, Form 13. Appointment of trustees of the will to be the trustees for the purposes of the Settled Land Acts, and sect. 42 of the Conveyancing Act, 1881, p. 615, Form 29; and extension of powers of Settled Land Acts, pp. 615 et seq. Investment clauses, pp. 355 et seq. Trustee clauses, pp. 621 et seq.*]

In witness, &c.

XXI. WILL *devising* Realty *to an* Only Son *and his* Issue *in* Strict Settlement.

[*COMMENCEMENT, p. 470, Form 1. Appointment of son executor, p. 471, Form 1. Devise of realty to uses declared, p. 601, Form 1. Son for life, p. 603, Form 6. To the use of his first son and other sons in tail, p. 604, Form 9. Remainder to his daughters in tail as tenants in common, p. 609, Form 16.*]

Power to testator's son to appoint pin-money to and to jointure any wife.

It shall be lawful for my said son, by deed revocable or irrevocable, or by will or codicil, to appoint to any and every woman whom he may marry (and that either before or after such marriage), for her life, or for any less period, by way of pin-money and jointure respectively, and either in bar of dower and free-bench or otherwise, any yearly rentcharge or rentcharges, not exceeding £—— in the whole by the year, free from all deductions, to be charged upon all or any part or parts of the said hereditaments hereby devised in settlement, and to be payable at such times and in such manner as he shall direct.

Power to testator's son to charge estates with portions for younger children.

It shall be lawful for my said son, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the said hereditaments hereby devised in settlement with the payment of such sum or sums of money as he shall think fit, not exceeding in the whole in the several events hereinafter specified the several sums hereinafter mentioned, as and for the portion or portions of every or any of the daughter or daughters and younger son or younger sons of my said son who shall not be entitled or presumptively entitled to the said hereditaments in remainder immediately expectant on the death of my said son, that is to say, if

there shall be only one such child the sum of £——, and if there shall be only two such children the sum of £——, and if there shall be only three such children the sum of £——, and if there shall be more than three such children the sum of £——, such portion or portions to be an interest or interests vested in and to be paid to or shared and divided between or among such child or children, or any one or more of them, at such age or time, or respective ages or times, and with such provisions for maintenance and advancement in the meantime, and if more than one in such shares and proportions, and with such annual sum or sums of money, conditions, restrictions, and limitations over (such annual sum or sums of money and limitations over being for the benefit of one or more such child or children respectively) as my said son shall in manner aforesaid direct; And also to charge the hereditaments charged with such portion or portions respectively with the payment of such yearly sum or sums of money as he shall think fit, for or towards the maintenance and education of the daughter or daughters and younger son or younger sons for the time being of my said son until her, his, or their portion or respective portions shall become vested and payable, so as the same do not exceed the interest of such his, her, or their portion or respective portions, or presumptive or expectant portion or respective portions, after the rate of 4 per centum per annum, and by deed, will, or codicil, to appoint for any term or terms of years, to any person or persons with or without impeachment of waste, the said hereditaments so to be charged as aforesaid upon the usual trusts, for securing, raising, and paying such portion or respective portions, and the costs of and incident to raising the same and the execution of the trusts thereof.

XXI. DEVISE TO ONLY SON AND HIS ISSUE, IN STRICT SETTLEMENT.

It shall be lawful for my said son, if there shall be an entire failure of his issue at the time of his death, by his will or any codicil thereto, to charge all the hereditaments hereby devised in settlement, or any part or parts thereof, with any sum or sums of money not exceeding in the whole the sum of £——, with interest thereon at any rate not exceeding —— per cent. per annum, for the benefit of such persons or person, or for such purposes or purpose whatsoever as he shall think fit: And in manner aforesaid to appoint for any term or terms of years to any person or persons, with or without impeachment of waste, the said hereditaments so to be charged as aforesaid for securing, raising, and

Power to charge a gross sum by will.

XXI. DEVISE TO ONLY SON AND HIS ISSUE, IN STRICT SETTLEMENT.

paying such sum or sums respectively, with interest at the rate aforesaid.

[*Extension of powers under the Settled Land Acts, p.* 615, *Form* 31 (*s*). *Personalty to son, p.* 552, *Form* 2. *Trustee clauses, pp.* 621 et seq.]

In witness, &c.

XXII. WILL *disposing of the* Principal Part *of the* Testator's Property *to the* Uses *and upon the* Trusts *of his* Marriage Settlement.

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors, p.* 471, *Form* 3 (*t*). *Specific bequests, pp.* 480 et seq.]

Heirlooms to go with settled mansion house.

I bequeath my gold and silver plate, and also my collection of paintings in oil, to the said [*executors*], or other the trustees or trustee for the time being of the settlement, dated the —— day of ——, made on my marriage, in trust to permit the same to go and be enjoyed as heirlooms with the mansion house called —— Hall comprised in my said settlement; And, until all the limitations in tail of the said messuage comprised in the said settlement shall fail or be barred, or until the expiration of twenty-one years from the death of the survivor of such of the descendants or issue of my father as shall be living at my death (whichever event shall first happen), I direct that on the death of each person who shall be entitled to the freehold in possession of the said messuage by virtue of the said settlement, the said heirlooms shall go over to and be possessed by the next person on whom such freehold shall devolve by virtue of the said settlement; And on the failure or destruction of the said limitations in tail or the expiration of the said period (whichever shall last happen), I give the said heirlooms to the person who shall then be or last have been entitled to the possession thereof under the trusts aforesaid, absolutely. I give to my nieces, [*names*], each the sum of £——, free of duty, to be paid to them as soon as conveniently may be, with interest at 4 per cent. per annum from the time of my

Pecuniary legacies.

(*s*) All or any of the sub-clauses of Form 31 can be adopted, as the case may require.

(*t*) The trustees of the marriage settlement at the date of the will should be named as executors and trustees. The interpretation clause at the end of Form 3 will be omitted.

death. I charge my real estates with the payment of my debts in exoneration of my personal estate; And, subject thereto, I give the same and the residue of my personal estate to the said [*executors*], or other the trustees or trustee for the time being of my said marriage settlement, their or his heirs, executors, administrators, and assigns, to uses and upon trusts corresponding as nearly as may be to the uses and trusts in the said settlement contained concerning the freehold estates thereby settled. And I appoint the said trustees or trustee to be the trustees or trustee of the settlement hereby created for the purposes of the Settled Land Acts, 1882 to 1890, and of sect. 42 of the Conveyancing Act, 1881.

In witness, &c.

XXII. DEVISE AND BEQUEST ON TRUSTS OF SETTLEMENT.

General devise and bequest to trustees of marriage settlement.

XXIII. WILL *of a* Solicitor. Interest *in* Partnership Business, Law Books, Papers, *&c., bequeathed to a* Son (*a* Partner).

[*COMMENCEMENT, p.* 470, *Form* 1. *Appointment of executors and trustees, p.* 471, *Form* 3; *and guardians, p.* 475, *Form* 18. *Immediate legacy to wife, p.* 503, *Form* 1, *and life interest in furniture, &c.* (*excluding plate*) *to wife, p.* 484, *Form* 22. *Plate to children, p.* 483, *Form* 17. *Share of law books, office furniture, papers, &c., to son, p.* 488, *Form* 31.]

I appoint my said son, [*name*], to be my sole executor (*u*) so far only as concerns my share and interest in the business and property of our said partnership; And I empower [*add power to wind up partnership affairs, &c., p.* 630, *Form* 9. *Residue to trustees, p.* 553, *Form* 5*b*. *Trusts of proceeds, p.* 556, *Form* 3. *Trust for investment with power to vary, p.* 559, *Form* 13. *Declaration of trusts of invested residue*, ibid., *Form* 14. *Disposition of residuary estate in favour of testator's wife and children, see pp.* 562 et seq., *Forms* 1 *to* 4, *or as circumstances may require. Power to appoint new trustees, p.* 651, *Form* 21. *Investment clauses, pp.* 355 et seq. *Trustee clauses, pp.* 621 et seq.].

Appointment of testator's partner as special executor of share of testator in partnership.

In witness, &c.

(*u*) It seems advisable to appoint the son to be special executor in respect of the partnership business, as otherwise it seems doubtful whether the statutory powers given to *executors* by sect. 21 of the Trustee Act, 1893, would be excluded: see sub-sect. (3) of that section.

XXIV. CODICIL ADDING NEW TRUSTEE.

XXIV. CODICIL *appointing* Additional Executor *and* Trustee.

THIS IS A CODICIL to the will of me, [*testator*], of, &c., which bears date the —— day of ——. Whereas, since the date and execution of my said will, my eldest son, [*name*], has attained the age of twenty-one years, Now I hereby appoint him to be a trustee and executor of my will, in addition to [*trustees*], the trustees and executors named therein: And I declare that my said will and all devises, bequests, powers, and provisions therein contained shall be read and construed in the same manner, and shall have the same operation and effect in all respects, as if the name of the said [*son*] had been in each and every instance throughout the said will added to the names of the said [*trustees of will*], excepting only that my said son shall not take or have any pecuniary legacy for his trouble in the execution of the trusts of my said will (*x*), as he will take valuable beneficial interests under the trusts thereof. And in all other respects I confirm my said will (*xx*).

In witness, &c.

XXV. CODICIL *appointing a new* Trustee *and* Executor *in the* Room *of a* Trustee *and* Executor *of the* Will, *who had* Died *in* Testator's Lifetime.

I [*testator*], of, &c., declare this to be a codicil to my will, bearing date the —— day of ——. Whereas, since the date of my said will [*deceased trustee*], of, &c., one of the trustees and executors named therein, has died: Now I hereby appoint my friend [*new trustee*], of, &c., to be a trustee and executor of my said will in the place of the said [*deceased trustee*]. And I direct and declare that my said will shall be read and construed in the same manner, and shall have the same operation and effect in all respects, as if the name of the said [*new trustee*] had been inserted therein, instead of the name of the said [*deceased trustee*]. And I bequeath to the said [*new trustee*], for his trouble in the execution

(*x*) An expression of intention on this point seems to be advisable, in order to exclude doubt.

(*xx*) As to the effect of the confirmation of a will by a codicil, see *Re Fraser*, [1904] 1 Ch. 726, 734; *Re Park*, [1910] 2 Ch. 322; *Re Aynsley*, [1914] 2 Ch. 422.

of the trusts of my said will, the legacy or sum of £——, which by my said will is expressed to be given to the said [*deceased trustee*]. And I declare, that the said legacy shall be payable at the same time and in the same manner as the legacy for which it is substituted. And in all other respects I confirm my said will.

In witness, &c.

XXV. CODICIL SUBSTITUTING NEW TRUSTEE.

XXVI. CODICIL *substituting* Two Persons, *in lieu of those named in the* Will, *as* Trustees *and* Executors.

[*COMMENCEMENT, p.* 471, *Form* 2 *or* 3.] I hereby revoke the appointment of [*old executors*] as executors and trustees of my said will, and in lieu thereof, I appoint [*new executor*], of, &c., and [*new executor*], of, &c., to be the executors and trustees of my said will; And I declare that my said will shall be read and shall take effect as if the names of the said [*new executors*], respectively, were written in every part of the said will wherein the names of [*old executors*] occur, in lieu of such last-mentioned names, and as if such last-mentioned names had been struck out from every part of the said will.

In witness, &c.

XXVII. CODICIL *made after* Second Marriage, *confirming the* Will, *giving an* Annuity *to the* Testator's Wife, *and admitting his* Children *by her to* Share *in his* General Estate *with the* Children *provided for by his* Will (*y*).

[*COMMENCEMENT, p.* 471, *Form* 2 *or* 3.] Whereas, since the date of the said will, I have intermarried with [*wife*]: Now I hereby give to my said wife the annual sum of £——, to be paid to her by equal half-yearly payments, on each —— day of —— and —— day of ——, during her life; with a proportional part thereof in respect of the period between the day of my death and the first of such days. And I declare, that all expressions and gifts contained in my said will, and referring to any child or children of mine otherwise than by name, shall be construed as if I had made the said will, and used the same expressions after my

(*y*) This precedent should not be used without careful consideration of the provisions and language of the will.

XXVII. CODICIL AFTER SECOND MARRIAGE.

said marriage. In all other respects I confirm my said will, and declare that the same shall operate and be construed, as to persons and things, as if I had made the same on this —— day of ——, 19—.

In witness, &c.

XXVIII. CODICIL *revoking* Legacies *and* Annuities *and bequeathing* Others.

[*COMMENCEMENT*, *p.* 471, *Form* 2 *or* 3.] I hereby revoke the legacy of £—— given to [A.] by my said will: I bequeath a legacy of £—— to [B.] in addition to the legacy of £—— given to him by my said will: I bequeath the legacy or sum of £—— to [C.]: I revoke the annuity of £—— bequeathed by my said will to my wife [D.] during her life, and in lieu thereof I bequeath to her during her life an annuity of £——, but without power of anticipation during any future coverture, and so long as she shall continue my widow an additional annuity of £——, to commence from my death, such substituted annuities, or such of them as shall for the time being be payable, to be paid at the like times and in like manner as the said annuity of £—— bequeathed to her by my said will and hereby revoked: I bequeath to my sister [E.] an annuity of £—— during her life in addition to the annuity of £—— bequeathed to her by my said will, and to be paid to her at the times and in like manner as such last-mentioned annuity. And in all other respects I confirm my said will.

In witness, &c.

XXIX. CODICIL *made after the* Purchase *of* Real Estates, *with* Directions *as to* Payment *of* Legacies, *&c.* Free *of* Duty.

[*COMMENCEMENT*, *p.* 471, *Form* 2 *or* 3.] I give and devise all my freehold and copyhold estates to the use of my trustees and their heirs, in trust, as soon as conveniently may be after my death, to sell and convert the same into money, and to be possessed of the proceeds upon the trusts declared in my will of my general personal estate. I declare, that all the annuities and other legacies, whether pecuniary or specific, given by my will shall be paid clear of death duties.

In witness, &c.

XXX. CODICIL *reviving a* WILL *previously* REVOKED.

[*COMMENCEMENT*, *p.* 471, *Form* 2 *or* 3.] WHEREAS I [*testator*], of ——, made my said will on the —— day of ——, and have since revoked the same. Now, I hereby annul such revocation, and declare that the said will is valid and subsisting (*z*).

IN WITNESS, &c.

XXXI. ANOTHER FORM *of* REVIVAL.

[*COMMENCEMENT*, *p.* 471, *Form* 2 *or* 3.] WHEREAS by two codicils, dated respectively the —— of ——, and the —— day of ——, to my said will, I have partially altered the disposition of my property contained in my said will; AND by another codicil thereto, dated, &c., I have wholly revoked my said will, together with the two first-mentioned codicils thereto. Now, I revoke the said codicil of the —— day of ——, and also the codicil of the —— day of —— (*a*); AND I declare my said will, and the codicil thereto, dated the —— day of ——, to be and contain my last will.

IN WITNESS, &c.

XXXII. WILL *reviving a* WILL *revoked by* MARRIAGE (*b*).

I [*testator*], of, &c., declare this to be my last will: WHEREAS I made my will on the —— day of ——, 19—, and have since intermarried with [*wife*]. Now I hereby revive and confirm the

(*z*) See sect. 22 of the Wills Act, 1837.

(*a*) These dispositions must be expressly revoked in the revoking codicil itself; they will not be effectually revoked by a statement to that effect in the attestation clause, which is no part of a will or codicil: see *Re Atkinson*, 8 P. D. 165.

Care must be taken that no person who, or whose wife or husband, takes any benefit under the will is allowed to attest the reviving codicil.

(*b*) It must be remembered that marriage is not an absolute revocation of every will; for an appointment made in exercise of a power simply collateral will remain unaffected by the marriage: Wills Act, 1837, s. 18. Upon the wording of that section it seems to be clear that an appointment under a power which is followed by a limitation, in default of appointment, to persons who *might* sustain the character of heir or next of kin

XXXII. REVIVING A WILL.

said will, and declare that the same shall operate and be construed, as to persons and things, as if I had made the same on this —— day of ——, in the year ——.

In witness, &c.

XXXIII. SIMPLE Revocation *of a* Will (*c*).

I [*testator*], of, &c., hereby revoke an instrument bearing date, &c., and purporting to be my last will, which instrument I have deposited with [*name*], of, &c.

In witness, &c.

XXXIV. MEMORANDUM *of* Alteration *and* Re-execution *of a* Will (*d*).

BE IT REMEMBERED, that I [*testator*], have made in my own handwriting [*or,* caused to be made], in this my will the alterations hereinafter specified; (that is to say), in the twenty-first line of the first page, the words [*words*] are erased, and the words [*words*] are inserted in their stead. The words [*words*] in the seventh line of the second page, and the eighth, ninth and tenth lines of the same page, and the words [*words*] in the eleventh line of the same page, are erased. Between the words [*words*] and [*words*] in the nineteenth line of the same page, the words [*words*] are inserted. I declare the above writing so altered to be my will.

In witness, &c.

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of the donee, but who are not so described, is within the saving, and would not be revoked by marriage: see *Re Fenwick,* L. R. 1 P. & D. 319.

A revival of a will may be effected with equal efficiency by a memorandum as follows, written at the foot of the will:—

"I hereby revive and confirm the above-written will, and declare, &c."

The memorandum must, of course, be duly attested as any other testamentary instrument.

(*c*) As to the revocation of a will by "burning, tearing, or otherwise destroying," see Wills Act, 1837, s. 20.

(*d*) As to alterations in a will, see Wills Act, 1837, s. 21.

XXXV. MARGINAL ALTERATION *in a* WILL.

FOR (*e*) the words [*words*] through which I have drawn my pen [*or*, which I have caused to be erased], it is my will that the words [*words*] be inserted.

IN WITNESS, &c.

XXXVI. WILL *of* REAL *and* PERSONAL ESTATE *in* ENGLAND *and in a* COLONY.

1. [*COMMENCEMENT*, *p.* 470, *Form* 1.]

2. I appoint [*executor*], of, &c., and [*executor*], of, &c., executors and trustees of my will, except as regards my real and personal estate in the colony of — —.

3, 4. [*Specific legacies and general legacies.*]

5. *Devise and bequest of residue real and personal*, except the real and personal estate hereinafter devised and bequeathed to my colonial trustees, to the said [*general trustees*], in trust that they or the survivors of them, or other the trustees or trustee for the time being for the general purposes of my will (hereinafter called "my general trustees"), shall sell, &c. [*trust for sale and conversion*, *p.* 555, *Form* 1].

6. *Trusts of proceeds for payment of debts, &c.*, "other than the debts owing by me in the said colony, if and so far as the provision hereinafter made for the payment of the same shall be sufficient," *p.* 556, *Form* 3.

7. *Trust for investment of residue with power to vary*, *p.* 559, *Form* 13.

8. *Declaration of trusts*, *p.* 559, *Form* 14.

9. *Trust for wife during widowhood and then for children*, *pp.* 562 et seq.

10. *Advancement clause*, *p.* 585, *Form* 7.

11. *Ultimate trust in default of children*, *p.* 564, *Form* 1 (e).

12. *Investment clause*, *p.* 355 et seq.

(*e*) If the marginal alteration be not written opposite to the part of the will which is intended to be corrected, some mark of reference should be affixed to the passage and a corresponding mark to the marginal correction.

XXXVI. WILL OF REAL AND PERSONAL ESTATE.

13. *Power to manage real and leasehold estates until sale, p.* 588, *Form* 15*a*; *and add any other powers or provisions relating to the unconverted estate which may be appropriate.*

14. I devise and bequeath unto [*colonial trustees*] (hereinafter called "my colonial trustees"), all my estate and effects, real and personal, situate and being at my death in the colony of ——, including debts and choses in action then recoverable by legal proceedings in the said colony (*f*), upon the like trusts and subject to the like powers and provisions with respect to the sale and conversion thereof and management and leasing until sale (so far as applicable) as are hereinbefore contained with reference to my general estate hereinbefore devised and bequeathed to my general trustees.

15. My colonial trustees shall hold the net proceeds of the sale and conversion of the real and personal estate hereinbefore devised and bequeathed to them and the net rents, profits, and annual income thereof until sale or conversion, after payment thereout of outgoings and expenses of management and realization or otherwise, and any debts owing by me in the said colony, upon trust to remit such net proceeds, rents, profits and income, as and when the same shall be received by them, to my general trustees to be held and applied by them upon the trusts and in the manner hereinbefore expressed concerning the proceeds of the sale and conversion of my general estate and the income thereof.

16. The receipt of my general trustees and my colonial trustees respectively for any proceeds of sale or other moneys or property paid, delivered or transferred to them by virtue of this my will, shall be a sufficient discharge to the person or persons paying, delivering or transferring the same therefrom.

17. My general trustees as to my general estate and any moneys or property received by them from my colonial trustees, and my colonial trustees as to property for the time being vested in them hereunder, shall have full power to apportion blended trust funds, &c. [*continue as in Form* 15, *p.* 626].

18. I appoint the said [*colonial trustees*] special executors of this my will as to the real and personal estate hereinbefore devised and bequeathed to them.

19. My acting general executors or executor, and my general

(*f*) See *Re Clark*, [1904] 1 Ch. 294.

trustees as to my general estate, and my acting special executors or executor and my colonial trustees as to my colonial estate, may, in their or his absolute discretion, allow, &c. [*continue power to compromise, &c., as in Form* 16, *p.* 627].

20. My general trustees and colonial trustees respectively, may, &c. [*continue power to employ solicitors, &c., as in Form* 10, *p.* 624; *and for professional trustee*, "whether general or colonial," *to charge for services as in Form* 11, *p.* 625].

21. If any of the trustees hereby appointed shall die in my lifetime, or if and so often as any trustee hereof for the time being shall after my decease die, or desire to be discharged, or refuse or become unfit or incapable to act, or shall reside, being a general trustee, abroad, or being a colonial trustee out of the said colony for more than twelve calendar months, then my wife during her lifetime, and after her decease the surviving or continuing trustees or trustee of the class in which such vacancy or disqualification occurs (and for this purpose a refusing or retiring trustee, if willing to act under this power, shall be considered a continuing trustee), or the acting executors or administrators of the last surviving or continuing trustee of the same class, may appoint a new trustee or new trustees in place of the trustee so dying or desiring to be discharged or refusing or becoming unfit or incapable to act or residing out of the United Kingdom, or the said colony, as the case may be. And upon every such appointment the number of trustees may be increased or reduced (but not below two) in each class. And every new trustee may, as well before as after the transfer of the trust property to the trustees for the time being of the class to which he belongs, execute all the trusts or powers in respect of which he shall be so appointed trustee as well and effectually as a trustee hereby constituted.

22. I devise [all copyhold or customary hereditaments vested in me at my death as a trustee or mortgagee, and of which I may be tenant in the court rolls of any manor, to my general executors, their heirs and assigns, subject to the trusts and equities affecting the same respectively; And I devise] all my freehold estates vested in me at my death as a trustee or mortgagee in the said colony to the special executors hereinbefore appointed in respect of my estate in the said colony, their heirs and assigns, subject to the trusts and equities affecting the same.

In witness, &c.

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Kecav. 1:79

LONDON: PRINTED BY C. F. ROWORTH, 88, FETTER LANE, E.C.